OVERSIGHT OF THE FEDERAL ADVISORY COMMITTEE ACT

HEARING

BEFORE THE

SUBCOMMITTEE ON GOVERNMENT MANAGEMENT, INFORMATION, AND TECHNOLOGY

OF THE

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT HOUSE OF REPRESENTATIVES

ONE HUNDRED FIFTH CONGRESS

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OVERSIGHT OF THE FEDERAL ADVISORY COMMITTEE ACT

TUESDAY, JULY 14, 1998

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON GOVERNMENT MANAGEMENT,
INFORMATION, AND TECHNOLOGY,
COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT,
Washington, DC.

The subcommittee met, pursuant to notice, at 2 p.m., in room 2154, Rayburn House Office Building, Hon. Stephen Horn (chairman of the subcommittee) presiding.

Present: Representatives Horn, Kucinich, and Maloney.

Staff present: J. Russell George, staff director and chief counsel; John Hynes and Randy Kaplan, professional staff members; Matthew Ebert, clerk; and Brian Cohen, minority professional staff member.

Mr. HORN. A quorum being soon present, the Subcommittee on Government Management, Information, and Technology will come to order.

The purpose of the hearing is to assess the use of advisory committees by the executive branch of the Federal Government. Advisory committees are used to obtain expert advice on technical and policy issues as well as to solicit input from citizens on local issues.

There are currently almost 1,000 Federal advisory committees operating and funded by the government at a cost of $178 million in 1997. I should let you know that in various administrations, I have served as a member of a number of advisory committees. And I think the ones I was on did outstanding work. And I watched the individuals that were there. A lot of us were people that did not know a thing about the specialized nature of the subject.

I happen to have been one of the drafters, with the original drafter, Mr. Kufac of the National Institute of Corrections, which technically I guess is an advisory committee; it is part of the Department of Justice and, for administrative purposes, part of the Bureau of Prisons for the Department of Housing and Urban Development. But I was the one that knew the least about corrections in the United States, and when the Chief Justice said we have got to do something about it, I got picked to ask questions like "why"? Why are we doing this? That is a good role for a number of people. You don't have to be specialists.

So, I know that these advisory committees have worked very well under a number of circumstances, and that would include the Department of Housing and Urban Development where I was a part

of that, and various other agencies where I have been a consultant before my days in Congress.

One goal of this hearing is to identify the trends in the government's use and management of advisory committees. Another is to examine the effectiveness of the Federal Advisory Committee Act of 1972. We have two new reports from the General Accounting Office to help us in this process.

The Federal Advisory Committee Act was originally designed to address two major concerns. One, advisory committees seemed to be disorganized, duplicative, and generally in need of oversight. Two, committee activities often took place without public participation, making it hard to know whether the committees were really acting in the public interest.

The act addressed these concerns by requiring, among other things, open meetings, involvement by government officials, balanced membership, and governmentwide oversight. Several requirements were designed to ensure that each advisory committee is necessary and does not outlive its usefulness.

The General Accounting Office reports that some of these requirements are not being met. In February 1993, President Clinton issued Executive Order 12838. This order directed agencies to reduce by at least one-third the number of discretionary advisory committees. Since that time, the number of advisory committees has dropped from 1,305 to 963. Over the same period, however, the cost of these committees has increased by almost 50 percent in constant dollars, and the total number of individuals serving on advisory committees has increased by over 7,000 people.

A related and very important concern is whether the Federal Advisory Committee Act presents barriers to public participation. Now, I'm informed that July 14th, today, is Bastille Day in France. I remember studying the French revolution. I don't know that an advisory committee could have helped the king, but it seems an appropriate occasion to reflect on the importance of public participation in government.

Some agencies seem to interpret the Federal Advisory Committee Act with excessive caution, and as a result are less receptive to citizen input. We need to address that. We should be creating a more responsive government that encourages and promotes public participation.

One question for our witnesses today is whether greater public participation should take place within the scope of the Federal Advisory Committee Act. If so, does the act need to be modified to accommodate this priority?

We will hear from two panels today. On the first, the General Accounting Office, part of the legislative branch, will discuss the results of its recent study on the Federal Advisory Committee Act. The General Services Administration will discuss its role in administering the law. We will also hear from the Department of Energy and the National Institutes of Health.

On the second panel, we will hear from citizens who have direct involvement with the Federal Advisory Committee Act. They will relay their experiences and give us their thoughts. They will be most welcome, and we welcome our witnesses and look forward to their testimony.

We will explain to you how this works. I know the GAO group is very familiar with how it works, but your written statement will be put in the record the minute you're introduced. We will swear you in as witnesses, because we are an investigative committee, a subcommittee of the full Committee on Government Reform and Oversight. So if you would stand and raise your right hands. And anybody that is going to testify with you should stand too, your staff.

[Witnesses sworn.]

Mr. HORN. OK. There are seven members that have affirmed the oath. The clerk will note.

We will start with Mr. Stevens. Nye Stevens is quite familiar to us and we thank you for coming, Director of Federal Management and Workforce Issues, U.S. General Accounting Office; and G. Martin Wagner, Associate Administrator for Governmentwide Policy, General Services Administration; and he will be accompanied by James Dean, Director of Committee Management Secretariat of the General Services Administration. And then later we will have Ruth L.—you pronounce it Kirschstein?

Dr. KIRSCHSTEIN. That's correct.

Mr. HORN. Deputy Director, National Institutes of Health; and Jim Solit, Director, Executive Secretariat, Department of Energy.

Mr. Stevens, generally the routine is 5 to 10 minutes to summarize it. Your statement is automatically in the record.

STATEMENTS OF L. NYE STEVENS, DIRECTOR, FEDERAL MANAGEMENT AND WORKFORCE ISSUES, U.S. GENERAL ACCOUNTING OFFICE; G. MARTIN WAGNER, ASSOCIATE ADMINISTRATOR FOR GOVERNMENTWIDE POLICY, GENERAL SERVICES ADMINISTRATION, ACCOMPANIED BY JAMES DEAN, DIRECTOR, COMMITTEE MANAGEMENT SECRETARIAT, GENERAL SERVICES ADMINISTRATION, AND KENNETH FUSSELL, GENERAL SERVICES ADMINISTRATION; RUTH L. KIRSCHSTEIN, DEPUTY DIRECTOR, NATIONAL INSTITUTES OF HEALTH; AND JIM SOLIT, DIRECTOR, EXECUTIVE SECRETARIAT, DEPARTMENT OF ENERGY

Mr. STEVENS. Thank you, Mr. Chairman. I will be very short today in view of the number of witnesses and summarize my statement, which is in turn a summary of the two reports that we have recently issued to you and Senator Glenn.

The first of these was issued last month, and it follows up on a 1988 report we did on the fulfillment of the Federal Advisory Committee responsibilities by GSA at that period. The second one is being issued today and it presents the results of two surveys that we did, one of some 600 advisory committee members which was a random projectable sample, and the other is a survey of the 19 agencies that together comprise or are responsible for 90 percent of the 900 to 1,000 advisory committees that were in existence last year.

We have three general observations to make on the basis of this work which I've just mentioned, and then we can explore them further in questions, as you like. First, agencies do appear to be adhering to the requirements of the Federal Advisory Committee Act

and Executive Order 12838 which set limits on the number of discretionary advisory committees that agencies can establish.

We gave both agencies and committee members a lot of opportunities to assess the usefulness of the requirements, and also if they wanted to vent their frustrations at the burdens that were involved, and I have to say that on the whole we got quite a positive picture of the requirements—more positive than negative.

Most of the committee members felt that their advice was being taken seriously and that the committees that they were a part of were constituted in a fair and balanced manner and that the agencies only rarely asked them to give advice that they felt was based on less than adequate data or input or was in some way skewed in the agency's favor.

The agencies themselves, too, generally reported to us that FACA overall, and its detailed requirements—and we went into 17 specific requirements—were, on balance, more useful than burdensome. However, and this is our second general observation, there were a few concerns or potential issues that surfaced and that the committee might wish to explore with the other witnesses as it considers the overall impact of FACA.

For example, although 10 agencies said that they were not worried about the possibility of being sued for noncompliance with FACA if they consult with external groups outside of that statutory regime, nonetheless 8 of them, or nearly half the sample, said that they were inhibited at least to some extent by those provisions, and 7 of them in fact reported that they actually had been subject to litigation on those issues.

There also seemed to be some sentiment that peer review committees ought to be exempt from at least some aspects of the act because they are quite different from the general purpose advisory committees.

And the third general point has to do with GSA's oversight of FACA matters at agencies. We found that GSA was generally falling short of meeting its responsibilities and not much had changed since we issued the report in 1988. For example, we found that 36 percent of the 203 committee charters that we looked at and 38 percent of the justification letters that GSA had reviewed, they had reviewed them but nevertheless they had missing elements that the agencies had been required to provide. GSA had raised no questions about these nor made any kind of independent assessment as to whether the committees should be renewed or terminated, even when there were such red flags as the committees not having met during the year.

GSA has been late with its annual report to the President for 8 of the last 10 years, including this year when the report was actually due more than 6 months ago. And even though the annual reports list Presidential advisory committees for whom reports on the implementation of their recommendations are due to Congress, none had actually been prepared for the last 2 years. And GSA ultimately is meant to provoke the agencies on that point.

GSA has indicated it will implement our recommendations on these matters. In a couple of areas, it intends to seek legislation,

such as extending the date for the submission of the Presidential report.

That's a very brief summary, Mr. Chairman, but I will let you talk to the other witnesses and then we can answer questions on it.

[The prepared statement of Mr. Stevens follows:]

FEDERAL ADVISORY COMMITTEE ACT: ADVISORY COMMITTEE PROCESS APPEARS TO BE WORKING, BUT SOME CONCERNS EXIST

Summary of Statement by
L. Nye Stevens, Director
Federal Management and Workforce Issues
General Government Division

Federal agencies often receive advice from advisory committees on a range of issues, including policy and scientific matters. In fiscal year 1997, federal agencies could turn to over 900 advisory committees for advice. Congress enacted the Federal Advisory Committee Act (FACA) to ensure that (1) valid needs exist for establishing and continuing advisory committees, (2) the committees are properly managed and their proceedings are as open to the public as is feasible, and (3) Congress is regularly informed of the committees' activities.

GAO has issued two recent reports relating to FACA. The most recent of these reports, which is being released today, summarized the views of federal advisory committee members and federal agencies on specific FACA matters. The other report, issued in June 1998, assessed the General Services Administration's (GSA) efforts in carrying out its oversight responsibilities under FACA.

The information from these two reports led GAO to make three general observations.

1. Advisory committees appear to be adhering to the requirements of FACA and Executive Order 12838, which led to the establishment of ceilings for each agency on the number of discretionary advisory committees. These requirements do not appear to be overly burdensome to agencies.

2. Although the responses of committee members and agencies portrayed a more positive than negative image of FACA, their responses did raise concerns and issues that the Subcommittee may wish to explore in its consideration of FACA. For example, there appears to be some concern among agencies about the possibility of being sued for noncompliance with FACA if they obtain input from parties who are outside of the agency and its advisory committees.

3. GSA's Committee Management Secretariat has fallen short of fulfilling its FACA oversight responsibilities. For example, GSA has not submitted its annual reports to the President in time for him to meet the December 31 reporting date to Congress in 8 of the last 10 annual cycles. Further, GSA did not ensure that advisory committees were established with complete charters and justification letters. Thirty-six percent of the 203 advisory committee charters and 38 percent of the 107 justification letters from October 1996 through July 1997 that we reviewed were missing one or more items required by FACA or GSA regulations. GSA said it will take immediate action to improve its oversight.

Mr. Chairman and Members of the Subcommittee:

I am pleased to be here today to discuss our work on federal advisory committees as the Subcommittee explores possible changes to the Federal Advisory Committee Act (FACA) and the advisory committee process. Last November we presented to the Subcommittee an overview of advisory committees since 1993.[1] We have issued two reports on FACA since then on issues that you, Mr. Chairman, and Senator John Glenn asked us to examine. The most recent of these reports, which is being released today, gathered the views of federal advisory committee members and federal agencies on specific FACA matters.[2] The other report, which was issued last month, assessed the General Services Administration's (GSA) efforts in carrying out its oversight responsibilities under FACA.[3] My statement today will focus on these two reports, as you requested.

As you are well aware, federal agencies often receive advice from advisory committees, and this advice covers a range of topics and issues, including national policy and scientific matters. In fiscal year 1997, federal agencies could turn to 963 advisory committees for advice. Most of these committees were discretionary; that is, they were

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[1]Federal Advisory Committee Act: Overview of Advisory Committees Since 1993 (GAO/T-GGD-98-24, Nov. 5, 1997).

[2]Federal Advisory Committee Act: Views of Committee Members and Agencies on Federal Advisory Committee Issues (GAO/GGD-98-147, July 9, 1998).

[3]Federal Advisory Committee Act: General Services Administration's Oversight of Advisory Committees (GAO/GGD-98-124, June 15, 1998).

created by agencies acting under their own authority or were authorized–but not mandated–by Congress. The rest were mandated by Congress or the President.

Congress has long recognized the importance of federal agencies receiving advice from knowledgeable individuals outside of the federal bureaucracy. Nevertheless, Congress enacted FACA in 1972 out of concern that federal advisory committees were proliferating without adequate review, oversight, or accountability. FACA provisions are intended to ensure that (1) valid needs exist for establishing and continuing advisory committees, (2) the committees are properly managed and their proceedings are as open to the public as is feasible, and (3) Congress is regularly informed of the committees' activities.

To help meet these objectives, FACA directed that a Committee Management Secretariat, which is now located at GSA, be established and responsible for all matters relating to advisory committees. GSA has developed guidelines to assist agencies in implementing FACA; has provided training to agency officials; and was instrumental in creating, and has collaborated with, the Interagency Committee on Federal Advisory Committee Management.

Although FACA was enacted to temper the growth in advisory committees, the number of advisory committees grew steadily from fiscal year 1988 until fiscal year 1993, when the number totaled 1,305. In February 1993, the President issued Executive Order 12838, which directed agencies to reduce the number of discretionary advisory committees by at

least one-third by the end of fiscal year 1993. Under authority provided by the executive order, the Office of Management and Budget (OMB) established ceilings for each agency on its maximum allowable number of discretionary committees. Subsequently, the number of advisory committees declined from 1,305 in 1993 to 963 in fiscal year 1997, the most recent fiscal year for which complete data are available.

Although the number of advisory committees has decreased, the average number of members per committee and the average cost per committee have increased. On average, between fiscal years 1988 and 1997, the number of members per advisory committee increased from about 21 to 38, and the cost per advisory committee increased from $90,816 to $184,868. In constant 1988 dollars, the average cost per advisory committee increased from $90,816 to $140,870 over the same period. A total of 36,586 individuals served as members of the 963 committees in fiscal year 1997. According to data published by GSA, the cost to operate the 963 committees last fiscal year was about $178 million.

GAO's TWO RECENT FACA-RELATED REPORTS

To gather the views of advisory committee members on committee operations for our report being released today, we surveyed a statistically representative sample of advisory committee members. The questionnaire responses we received from 607 members are generalizable to the approximately 28,500 committee members for whom we had names

and addresses. We also sent a questionnaire to 19 federal agencies to obtain their views on FACA requirements, and all 19 completed the questionnaire. These 19 agencies account for about 90 percent of the federal advisory committees.

To determine for our June 1998 report whether GSA's Committee Management Secretariat was carrying out its FACA responsibilities, we reviewed committee charters and justification letters, annual reports for advisory committees, and other pertinent documents; applicable laws and regulations; and GSA's guidance to federal agencies. We also interviewed Committee Management Secretariat officials at GSA and committee management officers at nine agencies.

The information from these two reports led us to three general observations.

1. Advisory committees appear to be adhering to the requirements of FACA and Executive Order 12838. These requirements do not appear to be overly burdensome to agencies.

2. Concerns surfaced about certain advisory committee requirements that the Subcommittee may wish to explore in its consideration of FACA.

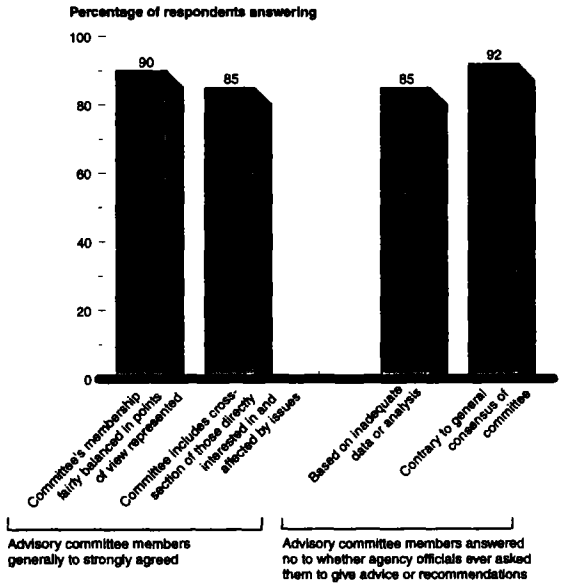
3. GSA has fallen short of fulfilling its FACA oversight responsibilities. In response to our June 1998 report, GSA said it will take immediate action to improve its oversight.

I will turn now to each of these observations in more detail. In examining the responses of advisory committee members to our questionnaire, we determined the overall response to each question and, in addition, separately reported the responses of peer review panel members and general advisory committee members where appropriate.

ADVISORY COMMITTEE REQUIREMENTS AND PROCESS WERE VIEWED IN A POSITIVE LIGHT OVERALL

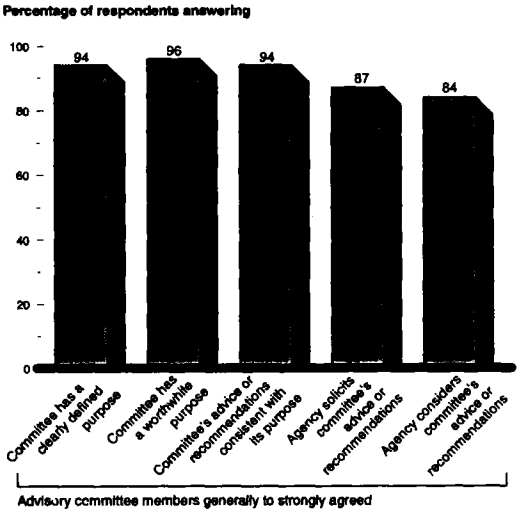
The answers the committee members gave to our survey showed that, generally, they believed that their advisory committees were providing balanced and independent advice and recommendations. The committee members also reported that they believed their committees had a clear and worthwhile purpose and that the committees' advice and recommendations were consistent with that purpose and considered by the agencies. These responses are shown graphically in the following two figures, which group together by topic a number of the specific questions that we asked committee members.

Figure 1: Advisory Committees Providing Balanced and Independent Advice and Recommendations



Source: Responses from surveyed advisory committee members.

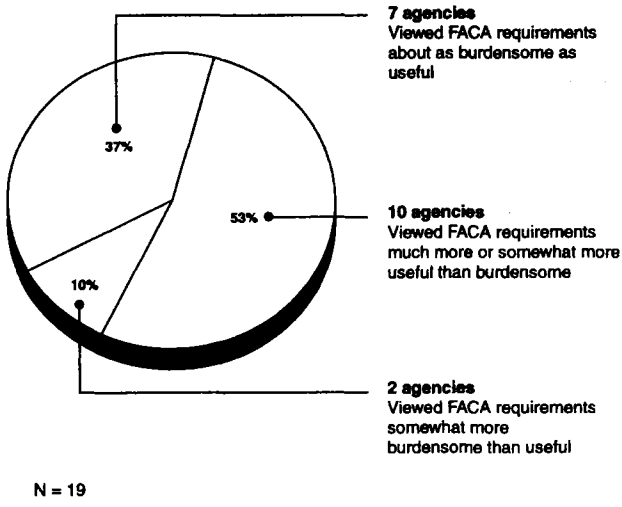
Figure 2: Advisory Committees Serving Useful Purpose



Source: Responses from surveyed advisory committee members.

FACA sets out requirements for agencies and advisory committees to follow, and we asked the 19 agencies about their perceptions of how useful or burdensome those requirements were. With regard to the requirements in general, figure 3 shows the range of agencies' responses. The largest number of agencies considered the requirements to be useful.

Figure 3: Agencies' Views of FACA Requirements Overall



Source: Responses from surveyed agencies.

In addition to their overall characterizations, the agencies also rated how useful and burdensome they found each of 17 FACA requirements. A majority of the agencies (generally more than 10 agencies) rated 14 requirements to be useful to a moderate, great, or very great extent. In contrast, only four requirements were considered to be especially burdensome by a majority of the agencies. These same four were also among those rated as useful to a moderate or greater extent.

We also questioned the agencies about the impact of FACA requirements on their receiving input from the public and about the impact of FACA requirements and Executive Order 12838 on their forming new advisory committees, and their responses were generally positive. We asked the agencies whether FACA had prohibited them from receiving or soliciting input on issues or concerns from public groups (other than from advisory committees). Most of the agencies–16 of the 19–answered no.

There has been some question about whether the possibility of litigation over compliance with FACA requirements has inhibited agencies from forming new advisory committees. The most frequent response–received from 14 of the 19 agencies–was that this possibility did not inhibit the formation of new committees.

As I noted earlier, Executive Order 12838 established ceilings for each agency on its maximum allowable number of discretionary advisory committees. A majority of the agencies (12) said that the ceilings did not deter them from seeking to establish new

advisory committees. Seven agencies, however, said the ceilings did deter them. An agency could request approval from OMB to establish a committee that would place it over its ceiling. Two of the seven agencies had done so during fiscal years 1995-1997, and OMB approved their requests.

CONCERNS SURFACED ABOUT CERTAIN ADVISORY COMMITTEE REQUIREMENTS

Although committee members and agencies responding to our questionnaires generally provided a more positive than negative image of FACA, their responses also pointed to concerns and issues that the Subcommittee may wish to explore in its consideration of FACA. We list these concerns in no particular order of priority.

- About 13 percent of the general advisory committee members said that agency officials had asked their advisory committees on occasion to give advice or make recommendations on the basis of inadequate data or analysis.

- A majority of the 19 agencies reported that two FACA requirements--preparing an annual report on closed advisory committee meetings and filing advisory committee reports with the Library of Congress--required little labor on their part but offered little value, at least in the agencies' estimation.

- Seven agencies offered suggestions for changing the FACA requirements, including two that suggested that rechartering be required every 5 years instead of the current 2 year cycle.

- Under FACA, peer review panels are treated as advisory committees, and six agencies indicated that they used peer review panels. Five of these agencies said that panels should be exempt from some, most, or all FACA requirements.

- Agencies identified 26 congressionally mandated committees that they believed should be terminated.

- GSA regulations allow agencies to determine whether members of the public may speak at advisory committee meetings. (Members of the public are allowed to submit their remarks in writing.) All 19 agencies allowed members of the public to speak before at least some advisory committees. However, agencies placed restrictions on the public's ability to speak at committee meetings (e.g., only if time permitted), and the restrictions varied from agency to agency.

- Advisory committees may also have subcommittees. Meetings of subcommittees may be exempt from FACA requirements, and agencies reported that about 27 percent of the meetings subcommittees held during fiscal year 1997 were not covered by FACA. For these meetings, the subcommittees may voluntarily follow FACA requirements.

However, the extent to which the requirements are followed appears to vary. For example, of the eight agencies that responded, only two said Federal Register notices were given for all or most subcommittee meetings. Five said a designated federal officer attended all or most subcommittee meetings.

- Although 16 agencies said FACA had not prohibited them from soliciting or receiving input from the public, 3 agencies said it had prohibited them. One agency said that it had to limit its prior practice of forming working groups or task forces to address specific local projects or programs. Another agency said that FACA had made it more cumbersome to seek citizen input because of the staff time required to complete FACA paperwork. And, the third agency said that solicitation of a consensus opinion from a task force or working group could lead to that task force or working group being considered subject to FACA.

- Finally, there appears to be some concern among agencies about the possibility of being sued for noncompliance with FACA if they obtain input from parties who are outside of the agency and its advisory committees. Although 10 agencies said the possibility of such litigation has inhibited them to little or no extent from obtaining outside input independent of FACA, 8 agencies said that it has inhibited them to some, a moderate, or very great extent.

The Director of GSA's Committee Management Secretariat said that the responses from committee members and agencies had suggested areas that should be examined further, several of which GSA already had been examining and others that GSA plans to examine.

GSA HAS FALLEN SHORT OF FULFILLING ITS FACA OVERSIGHT RESPONSIBILITIES

Although the GSA Committee Management Secretariat does not have authority to stop the formation or continuation of an advisory committee, FACA and GSA regulations assign it certain responsibilities for overseeing the federal advisory committee program. These responsibilities include

- ensuring that advisory committees are established with complete charters and justification letters;

- conducting a comprehensive review annually to independently assess whether each advisory committee should be continued, merged, or terminated;

- submitting information to the President in time to meet the statutory due date for the President's annual report to Congress on advisory committees; and

- ensuring that agencies provide Congress with follow-up reports on recommendations made by presidential advisory committees.

We concluded in our June report that the Secretariat had not carried out each of these four responsibilities. For example, even though all charters and justification letters had been reviewed by the Secretariat, 36 percent of the 203 charters and 38 percent of the 107 letters from October 1996 through July 1997 that we reviewed were missing one or more items required by FACA or GSA regulations. When reviewing the advisory committees' annual reports for fiscal year 1996, the Secretariat did not independently assess whether committees should be continued, merged, or terminated. For 8 of the last 10 annual presidential reports on advisory committees, GSA submitted its report to the President after the President's report was due to Congress. The Secretariat did not ensure that agencies prepared for Congress the 13 follow-up reports required on recommendations made by presidential advisory committees in fiscal years 1995 and 1996, and in fact none had been prepared. Based on our findings, we recommended that the GSA Administrator direct the Committee Management Secretariat to fully carry out the responsibilities assigned to it by FACA in a timely and accurate manner.

In response to that recommendation, the GSA Administrator said the Associate Administrator for Governmentwide Policy will ensure that the Committee Management Secretariat takes immediate and appropriate action to implement our recommendation.

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In summary, although agencies reported that they have benefited from FACA requirements in administering their advisory committee programs, there appear to be areas in which those requirements warrant a fresh look. In addition, there is room for GSA's Committee Management Secretariat to improve its fulfillment of its FACA oversight responsibilities. GSA says that it is acting on both fronts. Still, the Subcommittee may wish to explore the concerns surfaced in our reports as it considers ways to improve FACA.

Mr. Chairman, this concludes my statement. I will be pleased to answer any questions you or other Members of the Subcommittee may have.

(410346)

The GAO Reports referred to in Mr. Stevens' testimony are accessible on the U.S. General Accounting Office's Web site, www.gao.gov, or by calling (202) 512-6000.

Report #1: FEDERAL ADVISORY COMMITTEE ACT:
General Services Administration's Oversight of Advisory Committees
GAO/GGD-98-124
Issued June 1998

Report #2: FEDERAL ADVISORY COMMITTEE ACT:
Views of Committee Members and Agencies on Federal Advisory Committee Issues
GAO/GGD-98-147
Issued July 1998

Mr. HORN. Well, we thank you very much, Mr. Stevens.

Our next presenter is Mr. Wagner, who is responsible for the operation in the General Services Administration where he is Associate Administrator, Governmentwide Policy. And next to you is Mr. James Dean, the Director of the Committee Management Secretariat, General Services Administration. So between the two of you, you really follow this question. So thank you for coming and, Mr. Wagner, please proceed.

Mr. WAGNER. Thank you, Mr. Chairman. I am accompanied—we did a little switcharoo here. This is Dr. Ken Fussell.

Mr. HORN. Well, let's get the spelling then. So how are we spelling it?

Mr. WAGNER. Dr. Kenneth Fussell, F-u-s-s-e-l-l.

Mr. HORN. F-u-s-s-e-l-l?

Mr. WAGNER. And he will present a brief demonstration of GSA's internet-based committee reporting system. I do have Mr. Dean behind me, but we thought it would be somewhat more convenient——

Mr. HORN. Did he take the oath?

Mr. WAGNER. Yes, sir; he has taken the oath and he will testify.

Mr. HORN. So there were eight. Somebody hiding behind. OK, fire on.

Mr. WAGNER. I will briefly augment my written statement.

Mr. Chairman, during the past year we have had the opportunity to work with the subcommittee and the General Accounting Office to identify opportunities for improving governmentwide compliance with FACA. This has been very useful.

We now have 25 years' experience with the act's application to a wide variety of situations and these reviews have helped surface some issues that should be addressed. The work recently completed by GAO and GSA indicates that the act is working well.

While committee costs have increased in proportion to their workload, committee productivity is also increasing. Similarly, while the number of closed committee meetings are also increasing among such agencies as the Departments of Defense, Health and Human Services, and the National Science Foundation, the number of open or partially open meetings among the remaining agencies has increased as a proportion of the total.

Now, as FACA enters its second quarter-century, we need to take a closer look at how the use of advisory committees fits with the use of other public participation tools. I note you mentioned this in your statement. We must also assure that the act's major policy provisions keep pace with the Federal Government's need to collaborate more effectively with the public.

Mr. Chairman, with your permission, I would like to devote the remaining portion of the time allotted for our summary statement to Dr. Fussell, who will be assisted by Mr. Bruce Troutman, to demonstrate our new committee management system, and then I would be pleased to answer any questions you may have. Dr. Fussell.

Dr. FUSSELL. Mr. Chairman, on the monitor you have the opening screen of our committee management web-based data base. We had three major goals in building this web-based data base system. First, we were very concerned about improving the accuracy and

timeliness of committee data available to the President and the Congress in our annual report.

Second, we wanted to provide an up-to-date, technically sound, and universally available tool to all the government workers who were responsible and involved in producing this report. This tool facilitates both communication and information sharing.

Third, we wanted to provide readily available electronic access to the data and to the details of the annual report to the interested public. This data is available to anyone over the internet in the United States or in the world right now.

We have improved the accuracy and timeliness by engaging all the agencies with advisory committees in the development of a single accessible data base on the internet. We chose the internet because every government employee with a browser and access to the internet can utilize this system for both management and reporting of the committee data. They don't have to make any change to their equipment and they don't need any additional software.

Once the report is considered complete for any fiscal year, every citizen with a browser and access to the internet can examine the details of the annual report. For instance, this data was available to the public in March of this year.

A data base like this one is only as useful as the quality of the data that is entered into it. To improve the accuracy and timeliness of the data available to the President and the Congress, we are going to continuously seek to increase the use and relevance of this reporting tool to the committee managers. For instance, when higher-level managers enter the system, they can immediately see—the little highlighted section on your monitor is the last date that that particular data was checked—they can immediately see when data was changed for a particular committee, when some change has taken place in committee facts.

The program also allows contemporaneous updating of committee information throughout the fiscal year. It can be used as an ongoing management tool. An agency officer can track what is happening to the committees for which he or she is responsible with a statistical report. The statistical report allows him to know when the last time a committee was looked at, how many committees they have right at the moment, how many have been updated this past week, et cetera. And they also have something that some agencies have found particularly necessary, a report listing what committees are terminating or due for termination or due for renewal. Occasionally that slips.

Last but not least, to aid the ongoing management, committee managers can add their costs, their meetings, their reports, and their members as the specifics of those items change through our data entry menu and they can do that throughout the entire fiscal year; in a sense, keeping the data current and being ready for the annual report as soon as the fiscal year is over.

Finally, an agency officer can check to see where the agency stands in terms of a committee distribution and cost for the committee at any point in time up to the final date of the annual report, whatever that is determined to be.

So with these components in place, we feel that we can assure you of continuous improvement in timeliness, accuracy, accessibility, and in the completeness of the annual report.

This program will contribute both to the process of managing committees and it will—should result in an improvement in the timeliness of all future reports. The data base produced the results of the 1997 survey and the data that's there is the same data in the printed report which will be made available as soon as the President transmits it.

That completes my presentation and if you have any questions, I will be glad to answer them later.

[The prepared statement of Mr. Wagner follows:]

Mr. Chairman, Mr. Ranking Member, Members of the Subcommittee, I am pleased to discuss with you today the effectiveness of the Federal Advisory Committee Act (FACA), and GSA's role in achieving the Act's goals. I will also review our plans to address the General Accounting Office's (GAO) specific recommendations in its recent reports. Accompanying me today is James L. Dean, Director of the Committee Management Secretariat, established by section 7(a) of FACA, and Dr. Kennett Fussell, who is present to provide a brief demonstration of GSA's Internet-based committee reporting system.

Mr. Chairman, during previous testimony before this Subcommittee, I had the occasion to discuss the Act's relationship to Federal information policy and, most recently, how GSA and the agencies manage the responsibilities the Act gives them. In the interest of time, I will not repeat that information and will instead focus on the specific issues before us today.

TWENTY-FIFTH ANNIVERSARY OF FACA

As FACA enters its second quarter-century during fiscal year 1998, it is appropriate and important to examine opportunities for strengthening the Act's role in encouraging and promoting effective collaboration. Congress passed FACA in 1972 amidst concerns relating to the number and costs of advisory committees, as well as the lack of adequate means for ensuring their accountability to the public. Stated simply, Congress designed the Act to illuminate how agencies made decisions based on advice and recommendations from individuals outside of Government. Since 1972, the Act's coverage has been extended to more than 3,900 advisory committees made

up of an estimated 516,000 members. Total costs to support these efforts from 1972 to 1997 were $3.6 billion in 1997 constant dollars. Today, advisory committee members contribute between 150,000 and 200,000 days per year through service on 903 advisory committees covering a diverse range of issues (Charts I and II).

The environment within which the Act operates has changed dramatically since 1972. During the 1990's, the Executive branch expanded the use of advisory committees by obtaining greater direct participation from local communities, State and tribal governments. This shift contrasts with earlier approaches that emphasized decisionmaking at the national level.

FACA TRENDS

Mr. Chairman, you requested that our testimony address the extent to which the Act's primary goals of cost effectiveness and openness have been achieved.

There are several significant factors that have influenced total governmentwide costs associated with operating advisory committees, only one of which is whether the committee meeting is open to the public. For example:

- **Advisory committees have become an integral part of the basic business processes used by some agencies to accomplish their statutory missions.** The National Institutes of Health (NIH), the Food and Drug Administration (FDA), the National Science Foundation (NSF) and the National Endowment for the Arts (NEA) sponsor committees that perform critical functions in satisfying procedural and administrative protocols, while also providing advice and recommendations. Advisory committees have largely become institutionalized within these agencies for these reasons.

- **Advisory committees have become the preferred tools for addressing significant national issues.** Committees have been formed to respond to such emergencies as the Space Shuttle Challenger and Three-Mile Island accidents and, most recently, to evaluate issues related to aviation and information security. Costs associated with such committees vary greatly and may directly influence the growth in governmentwide expenditures during a given year.

- **Federal agencies are increasingly using Advisory committees in the Field.** As part of the Administration's initiatives to improve customer service and increase the public's participation in Federal decisions affecting local communities, agencies are establishing more advisory committees. Such committees are addressing a diverse range of issues, including those related to ecosystem management and restoration of environmentally contaminated facilities.

Accordingly, trends relating to FACA-related expenditures and public access to committee meetings must be viewed within the context of the contemporary use of advisory committees.

FISCAL YEAR 1997 ADVISORY COMMITTEE COSTS

During fiscal year 1997, 57 Federal Departments and agencies sponsored 963 advisory committees. A total of 36,586 individuals served as committee members; 5,698 meetings were held; and 1,101 reports were issued. Related expenditures of $178 million were necessary to fund such costs as compensation of committee members, reimbursement for travel and per diem expenses, Federal member and staff support expenditures, consulting fees, and administrative overhead. Approximately

$83.4 million, or 47 percent of all costs associated with supporting advisory committees during the year, were the result of indirect expenditures for Federal staff support and Federal member participation (Chart III).

A number of other committee costs, however, involve direct outlays by agencies. For example, Federal agencies spent $40.3 million in fiscal year 1997 to cover travel and per diem expenses for non-Federal committee members and staff. Committees then use GSA's Government travel discount programs to minimize their travel costs.

Terminating unnecessary or inactive committees also reduces costs. During the reporting period, 60 committees were terminated. Sponsoring agencies have identified another 98 committees for termination during fiscal year 1998, with associated combined savings of $4 million.

Compared with total expenses of $148.5 million during the previous year, total costs incurred during fiscal year 1997, or $178 million, reflect a 19.8 percent increase in resources dedicated for this purpose. However, the average nominal cost per committee meeting increased only slightly by 5 percent, from $29,656 during fiscal year 1996 to $31,239 in fiscal year 1997. In real terms (using 1997 constant dollars), overall costs increased by 17.3 percent and the average cost per committee meeting increased by only 3 percent.

ADVISORY COMMITTEE COST TRENDS

GSA evaluated advisory committee cost trends from fiscal year 1988 to fiscal year 1997, the same period that GAO reviewed. During that period, governmentwide costs have increased in real terms from $121.6 million to $178 million (Chart IV), or 46.4 percent. At the same time, however, the average cost to support each advisory committee member has declined in real terms from $5,727 in fiscal year 1988 to $4,866 during fiscal year 1997, for a net decrease of 15 percent (Chart V).

Similarly, the average real cost to fund advisory committee meetings has declined from $34,584 during fiscal year 1988 to $31,239 in fiscal year 1997, for a net decrease of 10 percent. The average number of committee meetings has increased from 3.5 per committee to 5.9 per committee during the same period, for a net increase of 69 percent.

A significant factor in the increased overall rate of expenditures for advisory committees governmentwide is a result of substantial levels of committee activity sponsored by the Department of Health and Human Services (HHS). From fiscal year 1988 to fiscal year 1997, HHS' costs have increased in real terms from $49.5 million to $81.1 million, for a net growth rate of 63.8 percent. During the same period, costs for all other agencies increased in real terms from $82.1 million to $96.9 million, or 18 percent. From 1988 to 1997, the number of advisory committee members sponsored by HHS increased from 5,147 to 14, 860 (Chart VI).

ADVISORY COMMITTEE PUBLIC ACCESS TRENDS

During fiscal year 1997, 5,698 advisory committee meetings were held. Of that number, 2,765, or 48.5 percent of the total, were open or partially open to the public. However, agencies such as the Departments of Defense (DOD) and Health and Human Services (HHS), and the National Science Foundation (NSF) scheduled a significant number of closed meetings. Taken together, the number of such meetings conducted by these three agencies represented 92 percent of all closed meetings held during fiscal year 1997 (Chart VII). Excluding the large number of meetings that DOD, HHS and NSF must keep closed, 89 percent of the remaining agencies' advisory committee meetings are directly accessible to the public.

Sessions may be closed or partially open to the public based upon provisions of the Government in the Sunshine Act. Examples of meetings which may be closed or partially closed include those involving discussions of classified information; reviews of proprietary data submitted in support of Federal grant applications; and deliberations involving consideration of information that impacts individuals' personal privacy.

Since 1988, the proportion of advisory committee meetings scheduled by DOD, HHS and NSF that are directly open to the public has declined from 85.2 percent to 25.2 percent during fiscal year 1997. At the same time, however, the proportion of meetings scheduled by the remaining agencies that are open to the public has increased from 70.5 percent during fiscal year 1988 to 89 percent during fiscal year 1997.

The total number of committee meetings held during fiscal year 1997, or 5,698, marked a 14 percent increase in activity compared with the previous year's total of 5,008. The average number of meetings per committee held during the year was 5.9, reflecting an 18 percent increase over the previous year's average of 5.0.

GAO RECOMMENDATIONS

Mr. Chairman, the GAO has just concluded a yearlong examination of GSA's efforts to implement its specific procedural responsibilities under the Act. We have welcomed the opportunity to work with the GAO on this effort and believe we are taking the right steps to address its recommendations. Since we have already provided detailed comments on both the final report and GAO's survey of advisory committee members and Federal Committee Management Officers (CMOs), I respectfully request that these comments be inserted into the record.

I would, however, like to briefly cover two important developments that have taken place since the GAO completed its assignment. First, GSA has completed a final draft of its revised regulations that implement FACA. GSA will soon send the new Proposed Rule to the Office of Management and Budget (OMB) for review. It addresses GAO's conclusion that GSA has not ensured that follow-up reports to Congress on public Presidential advisory committee recommendations were prepared by sponsoring agencies as required by section 6(b) of the Act. The Proposed Rule specifically provides for the inclusion of 6(b) follow-up responsibilities within the charters of Presidential advisory committees. GSA will record this information in its database to ensure compliance with section 6(b). The Proposed Rule will also restructure the process used by agencies to fulfill the requirement for consultation with the Secretariat

regarding proposals for new discretionary advisory committees. These changes will improve procedural compliance with the Act by further standardizing GSA's business processes.

Second, the Secretariat has launched the second version of its new Internet-based reporting system which serves as the centerpiece of its efforts to assist Federal agencies in providing annual data required by FACA. The Secretariat, during fiscal year 1998, added features to allow CMOs, Designated Federal Officers (DFOs), and support staff to contemporaneously add data on committee costs, meetings, and subcommittee activities. These features will eliminate the need to prepare all required materials at the end of the fiscal year and will, accordingly, reduce the time required to complete the *Annual Report of the President on Federal Advisory Committees.*

FACA AMENDMENTS OF 1997

Mr. Chairman, you asked us to address the status of actions to implement the Federal Advisory Committee Act Amendments of 1997 (Public Law 105-153; December 17, 1997). The Act specifies that GSA may issue regulations to effect its requirements (section 2(c)) and that GSA must prepare a report covering the Act's implementation by December 16, 1998 (section 3).

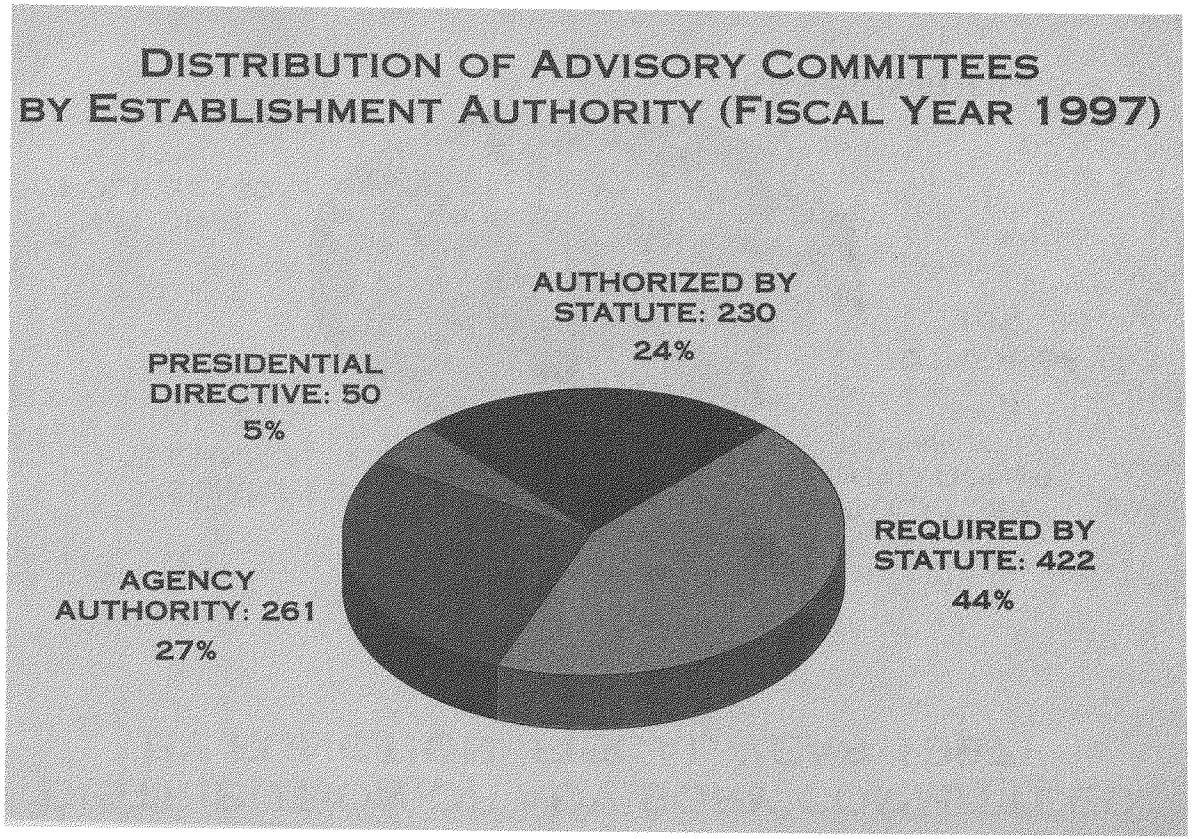
The Director of the Committee Management Secretariat has met several times with senior representatives of the National Academy of Sciences (NAS) and the National Academy of Public Administration (NAPA) since our last appearance before the Subcommittee on November 5, 1997. Both Academies have established internal procedures and controls for certifying compliance with relevant portions of FACA's

section 15 and are providing information to the public relating to their committee's activities and membership via the Internet.

GSA and the Academies have agreed to exercise the option contained in section 3 of the Amendments that permits the development of governmentwide regulations. GSA believes that the inclusion of new section 15's requirements within its revised regulations is essential in achieving maximum compliance with the Act. In addition, it is necessary for CMOs governmentwide to understand how to conduct business with the Academies should they be called upon for advice.

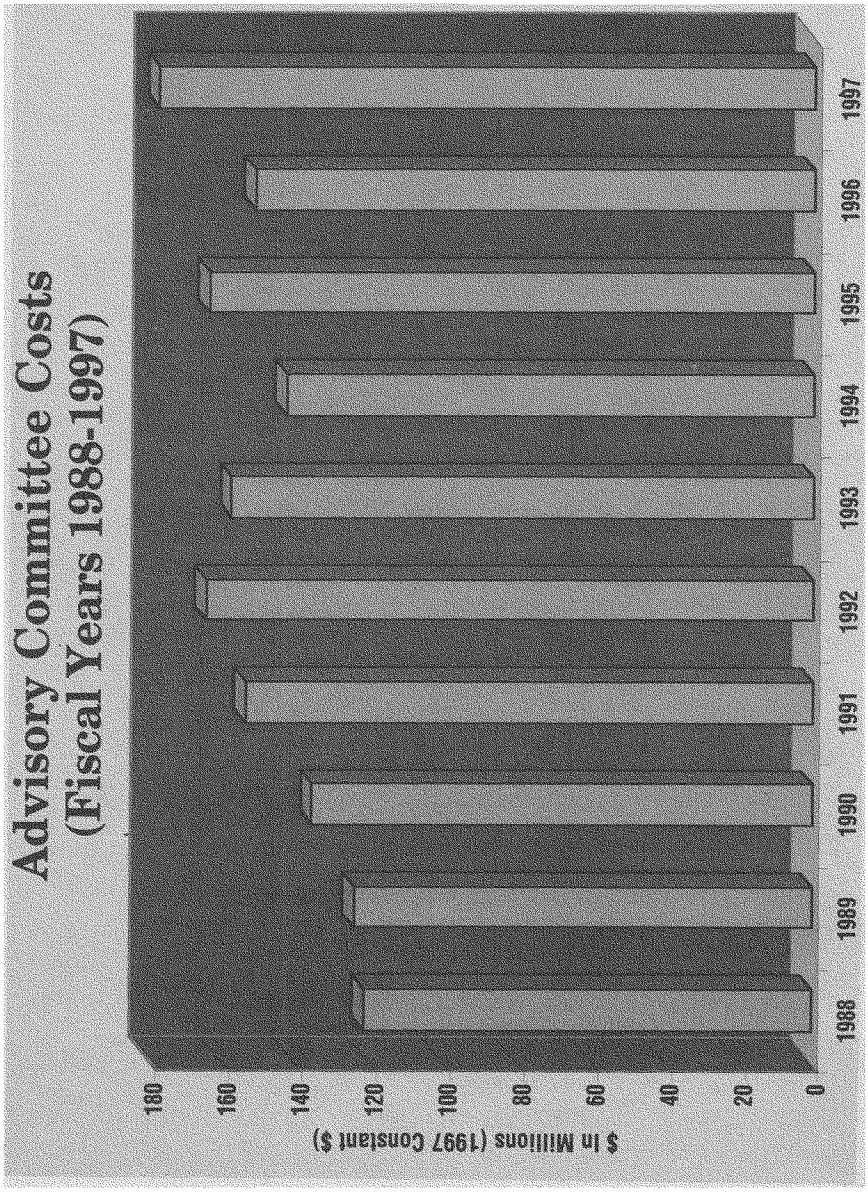
GSA will continue to conduct a dialogue with NAS and NAPA in order to fulfill its reporting obligations to the Congress.

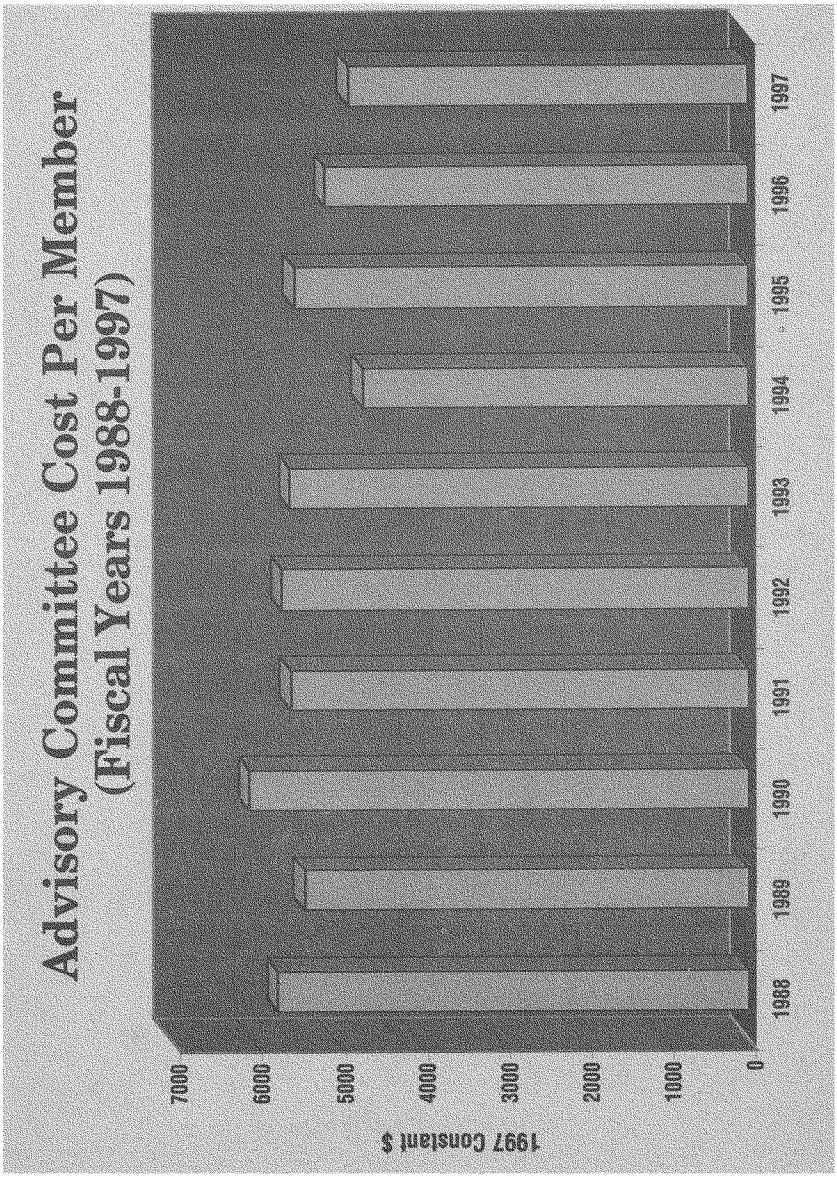
Mr. Chairman, Members of the Subcommittee, that concludes my prepared statement. I would be pleased to answer any questions you may have.

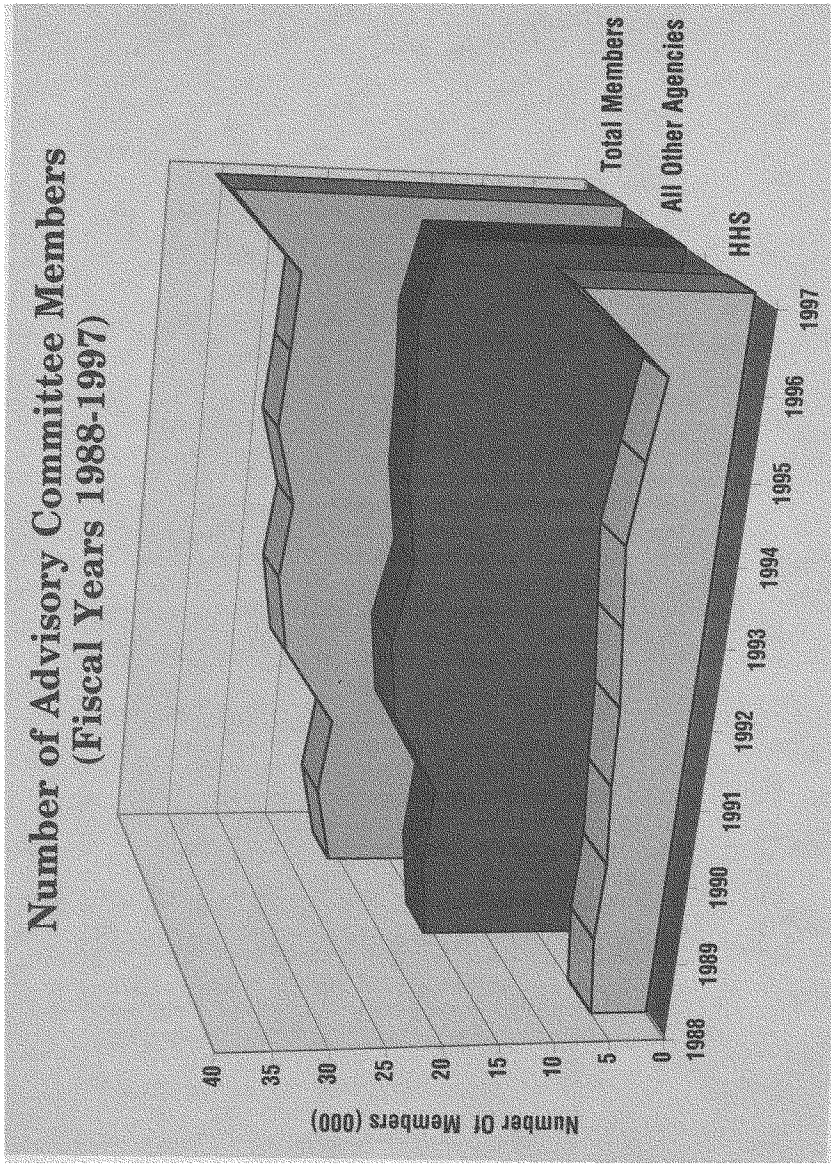

DISTRIBUTION OF ADVISORY COMMITTEES
BY ESTABLISHMENT AUTHORITY (FISCAL YEAR 1997)
AUTHORIZED BY STATUTE: 230
24%
PRESIDENTIAL DIRECTIVE: 50
5%
REQUIRED BY STATUTE: 422
44%
AGENCY AUTHORITY: 261
27%

DISTRIBUTION OF ADVISORY COMMITTEES
BY FUNCTION (FISCAL YEAR 1997)
GRANT
REVIEW: 132
14%
REGULATORY
NEGOTIATION: 9
1%
SCIENTIFIC/
TECHNICAL: 222
23%
OTHER: 98
10%
NATIONAL
POLICY: 160
17%
NON-SCIENTIFIC: 342
35%

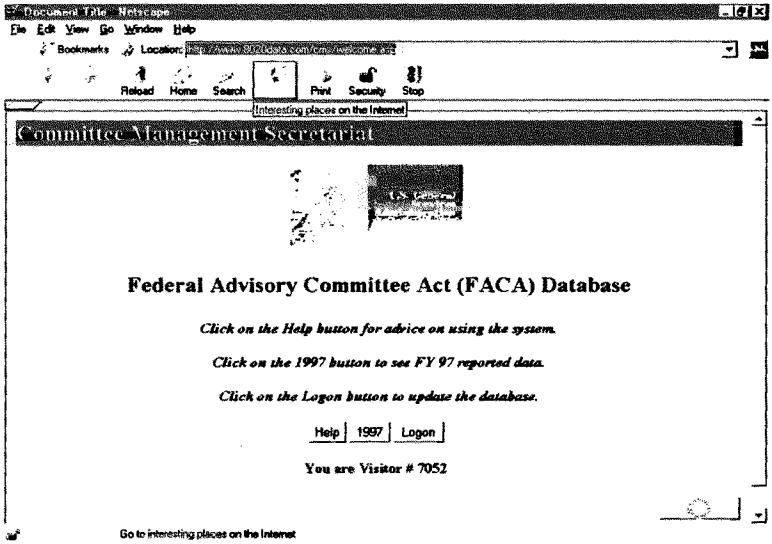
Advisory Committee Costs by Component (Fiscal Years 1988-1997)
$ in Millions (1997 Constant $)
90
80
70
60
50
40
30
20
10
0
1988
1989
1990
1991
1992
1993
1994
1995
1996
1997
Fed Staff Comp
Travel
Other
Non-Fed Comp
Consultant Comp
Fed Member Comp


Advisory Committee Costs
(Fiscal Years 1988-1997)
$ In Millions (1997 Constant $)
180
160
140
120
100
80
60
40
20
0
1988
1989
1990
1991
1992
1993
1994
1995
1996
1997


Advisory Committee Cost Per Member
(Fiscal Years 1988-1997)
1997 Constant $
7000
6000
5000
4000
3000
2000
1000
0
1988
1989
1990
1991
1992
1993
1994
1995
1996
1997


Number of Advisory Committee Members
(Fiscal Years 1988-1997)
Number Of Members (000)
40
35
30
25
20
15
10
5
0
1988
1989
1990
1991
1992
1993
1994
1995
1996
1997
Total Members
All Other Agencies
HHS

Advisory Committee Meetings Open or Partially Open to the Public (Fiscal Year 1997)
Percent
90
80
70
60
50
40
30
20
10
0
GovernmentWide Average
All Other Agencies
DOD
HHS
NSF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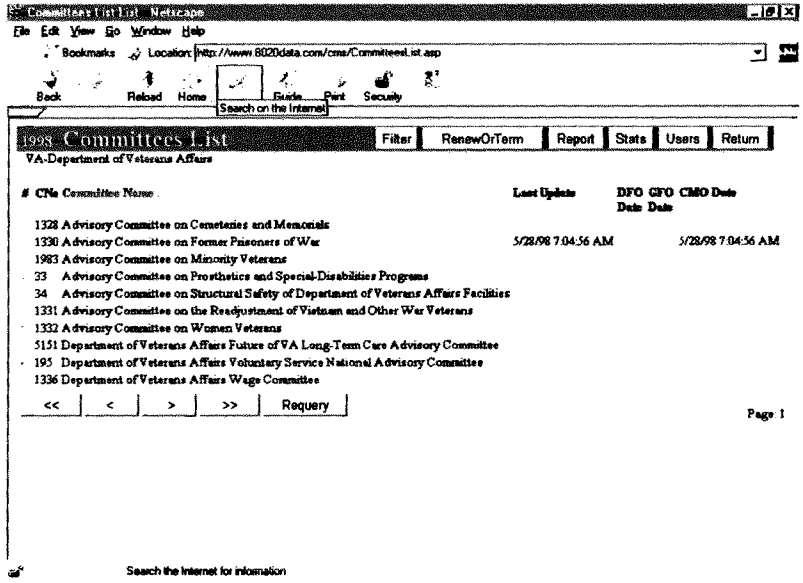
Interesting places on the Internet
Committee Management Secretariat
Federal Advisory Committee Act (FACA) Database
Click on the Help button for advice on using the system.
Click on the 1997 button to see FY 97 reported data.
Click on the Logon button to update the database.
Help 1997 Logon
You are Visitor # 7052
Go to interesting places on the Internet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1998 Committees List
Filter RenewOrTerm Report Stats Users Return
VA-Department of Veterans Affairs
CNo Committee Name
Last Update
DFO Date
GFO Date
CMO Date
1328 Advisory Committee on Cemeteries and Memorials
1330 Advisory Committee on Former Prisoners of War
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5/28/98 7:04:56 AM
1983 Advisory Committee on Minority Veterans
33 Advisory Committee on Prosthetics and Special-Disabilities Programs
34 Advisory Committee on Structural Safety of Department of Veterans Affairs Facilities
1331 Advisory Committee on the Readjustment of Vietnam and Other War Veterans
1332 Advisory Committee on Women Veterans
5151 Department of Veterans Affairs Future of VA Long-Term Care Advisory Committee
195 Department of Veterans Affairs Voluntary Service National Advisory Committee
1336 Department of Veterans Affairs Wage Committee
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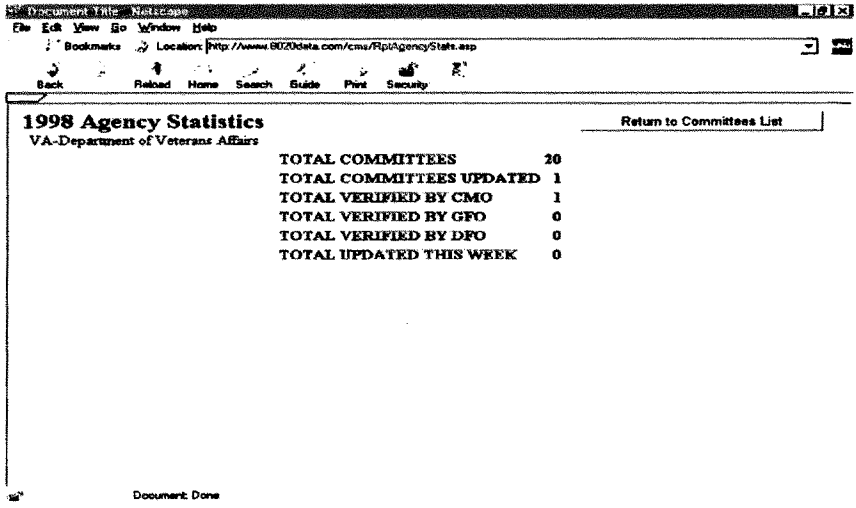

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1998 Agency Statistics

VA-Department of Veterans Affairs

Return to Committees List

TOTAL COMMITTEES	20
TOTAL COMMITTEES UPDATED	1
TOTAL VERIFIED BY CMO	1
TOTAL VERIFIED BY GFO	0
TOTAL VERIFIED BY DFO	0
TOTAL UPDATED THIS WEEK	0

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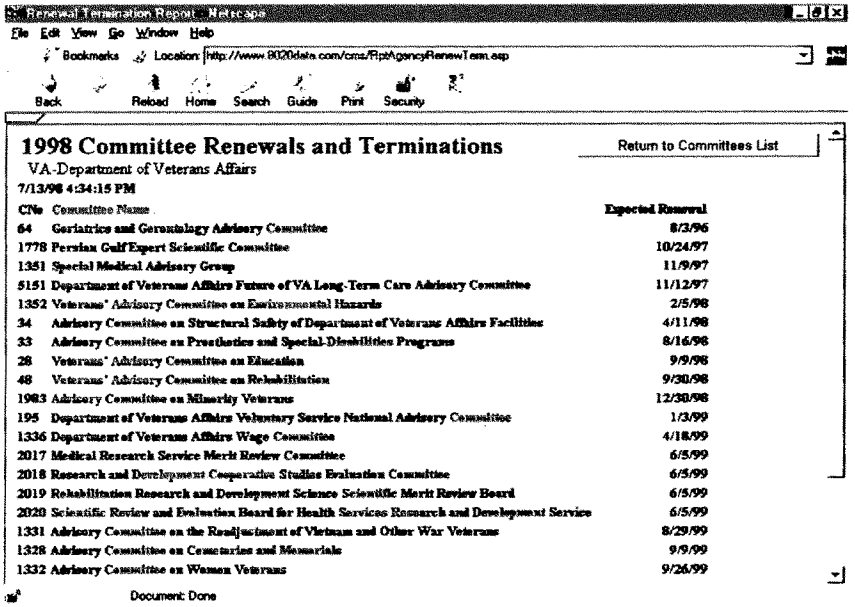

Renewal Termination Report - Netscape

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1998 Committee Renewals and Terminations

VA-Department of Veterans Affairs

Return to Committees List

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CNo	Committee Name	Expected Renewal
64	Geriatrics and Gerontology Advisory Committee	8/3/96
1778	Persian Gulf Expert Scientific Committee	10/24/97
1351	Special Medical Advisory Group	11/9/97
5151	Department of Veterans Affairs Future of VA Long-Term Care Advisory Committee	11/12/97
1352	Veterans' Advisory Committee on Environmental Hazards	2/5/98
34	Advisory Committee on Structural Safety of Department of Veterans Affairs Facilities	4/11/98
33	Advisory Committee on Prosthetics and Special-Disabilities Programs	8/16/98
28	Veterans' Advisory Committee on Education	9/9/98
48	Veterans' Advisory Committee on Rehabilitation	9/30/98
1983	Advisory Committee on Minority Veterans	12/30/98
195	Department of Veterans Affairs Voluntary Service National Advisory Committee	1/3/99
1336	Department of Veterans Affairs Wage Committee	4/18/99
2017	Medical Research Service Merit Review Committee	6/5/99
2018	Research and Development Cooperative Studies Evaluation Committee	6/5/99
2019	Rehabilitation Research and Development Science Scientific Merit Review Board	6/5/99
2020	Scientific Review and Evaluation Board for Health Services Research and Development Service	6/5/99
1331	Advisory Committee on the Readjustment of Vietnam and Other War Veterans	8/29/99
1328	Advisory Committee on Cemeteries and Memorials	9/9/99
1332	Advisory Committee on Women Veterans	9/26/99

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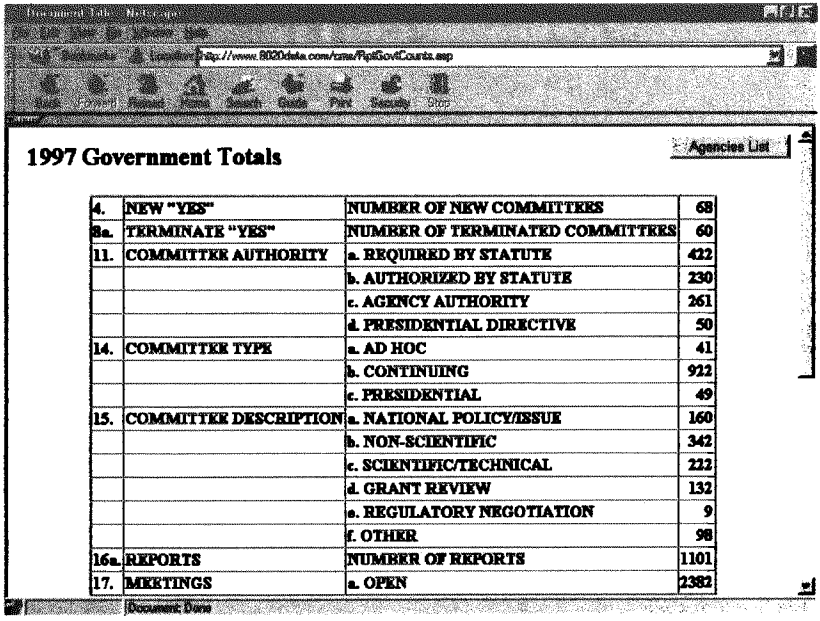
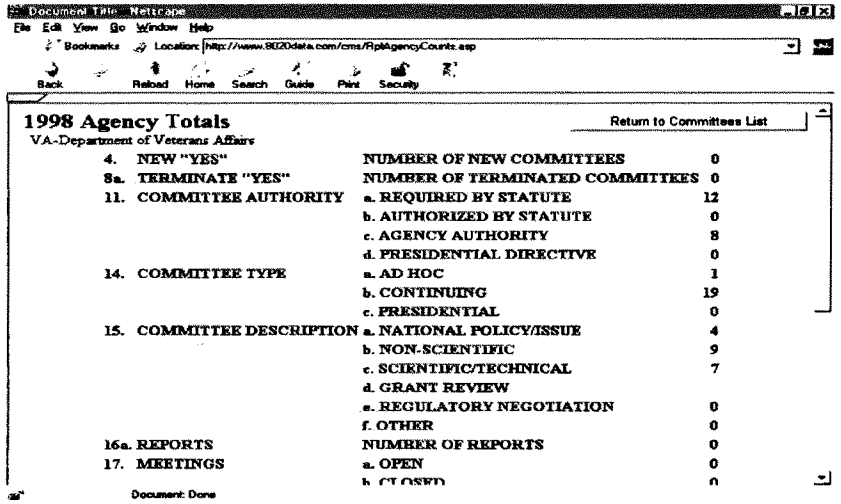


1997 Government Totals

Agencies List

4.	NEW "YES"	NUMBER OF NEW COMMITTEES	68
8a.	TERMINATE "YES"	NUMBER OF TERMINATED COMMITTEES	60
11.	COMMITTEE AUTHORITY	a. REQUIRED BY STATUTE	422
		b. AUTHORIZED BY STATUTE	230
		c. AGENCY AUTHORITY	261
		d. PRESIDENTIAL DIRECTIVE	50
14.	COMMITTEE TYPE	a. AD HOC	41
		b. CONTINUING	922
		c. PRESIDENTIAL	49
15.	COMMITTEE DESCRIPTION	a. NATIONAL POLICY/ISSUE	160
		b. NON-SCIENTIFIC	342
		c. SCIENTIFIC/TECHNICAL	222
		d. GRANT REVIEW	132
		e. REGULATORY NEGOTIATION	9
		f. OTHER	98
16a.	REPORTS	NUMBER OF REPORTS	1101
17.	MEETINGS	a. OPEN	2382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1998 Agency Totals
Return to Committees List
VA-Department of Veterans Affairs
4. NEW "YES" NUMBER OF NEW COMMITTEES 0
8a. TERMINATE "YES" NUMBER OF TERMINATED COMMITTEES 0
11. COMMITTEE AUTHORITY a. REQUIRED BY STATUTE 12
b. AUTHORIZED BY STATUTE 0
c. AGENCY AUTHORITY 8
d. PRESIDENTIAL DIRECTIVE 0
14. COMMITTEE TYPE a. AD HOC 1
b. CONTINUING 19
c. PRESIDENTIAL 0
15. COMMITTEE DESCRIPTION a. NATIONAL POLICY/ISSUE 4
b. NON-SCIENTIFIC 9
c. SCIENTIFIC/TECHNICAL 7
d. GRANT REVIEW
e. REGULATORY NEGOTIATION 0
f. OTHER 0
16a. REPORTS NUMBER OF REPORTS 0
17. MEETINGS a. OPEN 0
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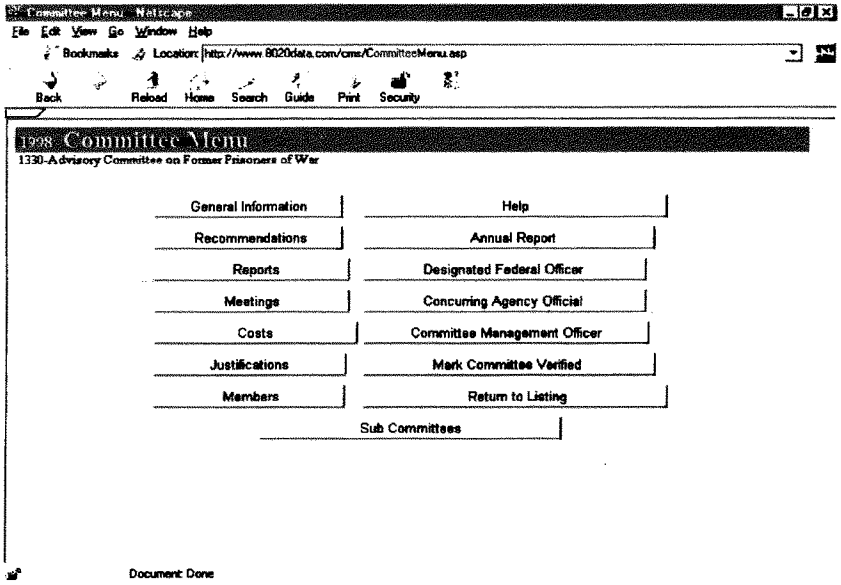
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1998 Committee Menu
1330-Advisory Committee on Former Prisoners of War
General Information
Help
Recommendations
Annual Report
Reports
Designated Federal Officer
Meetings
Concurring Agency Official
Costs
Committee Management Officer
Justifications
Mark Committee Verified
Members
Return to Listing
Sub Committees
Document: Done

Mr. HORN. Mr. Wagner, anything else to be said?

Mr. WAGNER. No.

Dr. FUSSELL. Mr. Dean, anything else to be said?

Mr. WAGNER. Not at this point, sir.

Mr. HORN. We might as well go, before we question you, start with Dr. Kirschstein and Mr. Solit.

Dr. KIRSCHSTEIN. Mr. Chairman, I am Dr. Ruth Kirschstein, the Deputy Director of the National Institutes of Health, and I am really pleased to be here this afternoon to tell you about the mission of NIH, its programs, and its use of peer review committees.

My remarks are based on a 42-year history of being at NIH, during which I have been deeply involved in all aspects of the use of its advisory committees, chairing a study team that was charged with conducting a thorough examination of the NIH grants peer review system and the committees that review our grant applications.

The National Institutes of Health is an agency within the Department of Health and Human Services, serving as a focal point for health research for the entire Nation, and it is the world's largest and most distinguished organization devoted to maintaining and improving health through medical research.

Some NIH research is confined to the laboratory. Other studies address specific diseases. Some research encompasses clinical studies using patients who have generously volunteered for such studies. The continuum provides the knowledge base for the development of new treatment and prevention strategies.

Actually, NIH is a federation of 22 individual research institutes and centers, each mandated by Congress and charged with a unique research mission, ranging from compelling public health problems such as drug abuse and low birth weight in infants, to particular diseases such as cancer, mental illness, or diabetes.

And the research enterprise is very large as well as complex. In most of the institutes, the funds are appropriated by Congress, which is nearly $14 billion in 1998, for support of biomedical research in two large arenas. One is the program of laboratory-based and clinical studies carried out by the scientists within the NIH itself, and this accounts for about 10 percent of the NIH-appropriated funds. All of the institutes use more than 80 percent of their appropriated funds to support research conducted at the more than 2,000 academic institutions throughout the country by the award of competitive grants and contracts.

We receive about 40,000 grant applications a year, which range from projects submitted by a single investigator, to large multisite clinical trials, to projects from small businesses, and requests for postdoctoral fellowships. The topics covered ranges as broad as molecular biology, behavioral studies, community-based clinical trials, mapping the human genome, and the development of new drugs for cancer and drug-resistant tuberculosis.

The very bedrock of our success as the leading Federal agency supporting health research is our peer review system. The results of this system provide the primary but not the sole basis upon which decisions regarding the award of Federal funds are made.

Funds are awarded for projects judged to be technically and scientifically meritorious. As mandated by law, there are two sequen-

tial levels of review, called the dual peer review system, and thus the technical and scientific assessment of proposed projects is kept separate from policy decisions about the appropriate medical areas to be supported and the level of resources to be allocated to particular projects.

The first level, the evaluation of scientific and technical merit, is conducted by one of our chartered initial review groups consisting of non-Federal scientists having expertise in various research disciplines, and they are drawn from academic and research institutes across the country.

These initial peer review committees convey their opinions of the scientific merit via written summary critiques to the second level of review performed by the national advisory boards or councils of the particular individual institutes which are mandated to do this task. Two-thirds of the 12 to 18 council members are, as required by the legislation, scientists in the biomedical disciplines covered by the particular institute. But more importantly, as the law requires, one-third of the members are health providers or laypersons who have demonstrated specific interest in activities, in matters related to health and to the specific mission of the particular institute. And it is this mix of the council members that provides an essential balance for the second level of the review and can give the decisionmakers at NIH the best possible advice.

The studies of the scientists who do research in our intramural program are also subject to peer review performed by boards of scientific counselors, again composed of non-Federal scientists who have made significant advances in the areas of research pertinent to the subject matter being covered. They assess the research in progress, proposed research, and the productivity and performance of staff scientists.

All of these groups are chartered under the requirements of the Federal Advisory Committee Act and comply with all the requirements of the legislation. In 1997, the latest year for which we have data, NIH had 141 chartered committees, of which 21 were the advisory councils and boards, 28 provided program advice, and the remainder were all engaged in peer review for scientific and technical merit.

Our system has ensured that the applications we receive each year are given a fair, thorough, and rigorous review, as expected by scientists and by the public.

We take very seriously our role as stewards of the public's funds and its trust. The NIH has played a major role in the explosion of new knowledge in human biology. Our scientists who are supported by us and also perform research in the intramural program are at the forefront of research discoveries and advances toward better ways to treat or prevent disease and promote good health. And I would be pleased to answer any questions.

[The prepared statement of Dr. Kirschstein follows:]

Mr. Chairman, Members of the Subcommittee:

I am Ruth Kirschstein, Deputy Director of the National Institutes of Health (NIH). I am pleased to be here this afternoon to tell you about the mission of NIH, its programs and its use of peer review committees. My remarks today are based on a forty-two year history of being on the staff of NIH, of which twenty-four years have been as a senior official. In the past twenty-five years, I have been deeply involved in all aspects of the use of advisory committees by NIH, chairing a study team that was charged with conducting a thorough examination of the NIH grants peer review system and the committees that reviewed grant applications. More recently, I have participated in other NIH committees that have identified and assessed current issues related to peer review.

Let me start by giving you some background about the National Institutes of Health. NIH is an agency within the Department of Health and Human Services, serving as the focal point for health research for the entire nation.

Biomedical Research and the NIH

The NIH is the world's largest organization devoted to maintaining and improving health through medical research. It seeks to expand fundamental knowledge about the nature and behavior of living systems and to apply that knowledge to improve the health of human beings, extend healthy life and reduce the burden of illness and disability. The research undertaken by the NIH assumes many forms, occurs in many places, and employs many techniques. Some research is confined to the laboratory and attempts to understand complex biological systems by examining individual molecules, cells, or tissues. Other research addresses normal human biology as well as disease in the context of living subjects. Some is

based on the study of human populations and on clinical studies using patients who have generously volunteered for these studies. This continuum of research provides the knowledge base for the development of new treatment and prevention strategies.

The NIH is actually a federation of twenty-two research Institutes and Centers, each individually mandated by Congress and charged with a unique research mission, ranging from compelling public health problems such as drug abuse and the causes of low birth weight in infants to particular diseases such as cancer, mental illness, or diabetes. Some Institutes concentrate research on a particular organ such as the heart, the kidney or the eye or on a stage of human development, such as childhood or aging. Each of the Institutes is prepared to respond to new or emerging diseases such as multi-drug resistant tuberculosis, Lyme Disease or other infectious diseases, the increase in the incidence of breast cancer or the effect of hip fractures due to osteoporosis in elderly women.

Scope of NIH-supported Research

Not only is the research enterprise of the NIH very large but it is also complex. In most of the Institutes, the funds appropriated by Congress (nearly $14 billion in FY 1998) support biomedical research in two large arenas. One is the program of laboratory-based and clinical studies carried out by scientists within the NIH itself. This is the NIH intramural research program and accounts for about 10 percent of the NIH appropriated funds. In total, the Institutes use more than 80 percent or $9 billion of the appropriated funds to support research conducted at the more than 2000 academic institutions, hospitals and other research facilities throughout the country, whose scientific faculty members do biomedical research

through the award of competitive grants and contracts. In addition, the Institutes provide support for the training of graduate students and postdoctoral scientists who will make future research discoveries and advances that will benefit the country in the coming years.

The NIH receives more than 40,000 grant applications a year, which include applications submitted by an individual investigator, applications for large multisite clinical trials, projects from small businesses, requests for fellowships from individual postdoctorals, and applications for research training programs. The topics covered by grant applications span a broad and complex range of science including molecular and cellular biology, behavioral studies, community-based clinical trials, technological development, projects to map the human genome, and the development of new drugs to treat recalcitrant cancers and drug-resistant tuberculosis.

To accomplish its mission, the NIH seeks advice from a variety of sources including 141 chartered committees, which are described below.

The NIH Peer Review System

The bedrock of the success of NIH as the leading federal agency supporting health research is its peer review system. The results of this system provide the primary, but not the sole, basis upon which decisions regarding the award of federal funds are made. Funds are awarded to academic or research institutions on behalf of the scientist or principal investigator whose creative project has been judged to be technically and scientifically meritorious. As mandated by law, and to assure the proper stewardship of appropriated funds, the review of research project applications involves two sequential levels of review, called the dual peer

review system. In this system, the technical and scientific assessment of proposed projects is kept separate from policy decisions about the appropriate medical areas to be supported and the level of resources to be allocated.

Initial Review Groups or Scientific and Technical Review

The first level of review, the evaluation of scientific and technical merit, is conducted by one of the many chartered initial scientific review groups. The groups or panels of peers of the applicants are established according to particular scientific disciplines or medical specialties. An individual group may consist of as many as sixteen to twenty members. These are primarily non-Federal scientists with expertise in various disciplines and areas of research, generally drawn from academic and research institutions and organizations across the country.

Each scientific peer review group is under the direction of a full-time Federal employee who serves as the Designated Federal Official. The primary requirement for service on a peer review group is competence as an independent investigator in a scientific or biomedical discipline. Other factors such as respect among peers and quality of research accomplished are also important. The reviewers assess each application individually before the meeting and prepare written critiques. Those projects deemed most competitive are fully discussed and those that are in the "upper half" in regard to technical merit are given a priority score, which reflects the intrinsic quality and scientific merits of the project.

Special Emphasis Panels

Special Emphasis Panels (SEPs), designed to assure that research grant applications of increasing diversity, breadth and complexity of scientific subject matter are appropriately reviewed. The scientists who submit these applications must be confident that the system can tap non-Federal scientific experts in areas as wide-ranging as molecular biology, structural chemistry, behavioral and social sciences, community-based clinical trials, behavioral interventions, the ethical, legal and social implications of the human genome effort, bioengineering, and organ-system based physiology, to name a few. These SEPs provide the necessary flexibility and fluidity for timely and appropriate scientific and technical review for merit, using scientists who are designated to serve for a specific one-time review.

National Advisory Boards and Councils

In advising on the scientific merit of applications, these initial peer review committees convey their opinions via written summary critiques to the second level of review, performed by National Advisory Boards or Councils of the individual Institutes. These Advisory bodies have been mandated by law not only to provide advice to the Institute leadership but to perform the second level in the peer review system. Two-thirds of the twelve to eighteen Council members are, as required by legislation, chosen because of their status as distinguished scientists in the biomedical and behavioral disciplines covered by the mission of the particular Institute. In addition, as the law provides, one-third of the members are health providers or lay persons who have demonstrated specific interest and activities in matters related to health and to the specific mission of the particular Institute. This mix of Council members provides

an essential balance in the second level of review. This important second level provides not only an affirmation (or lack of affirmation) regarding the scientific merit of the research proposal but also addresses the relevance and importance of the proposed work in understanding the nature and behavior of living systems and in providing new information for the diagnosis, treatment, cure or prevention of the medical disorders that afflict our citizens. The second level of review also considers policy issues related to scientific and health priorities and the level of resources that should be expended on particular programs.

This system provides the appropriate NIH decision-making officials with the best available advice about scientific and technical merit as well as societal values and needs.

I would also like to emphasize the fact that the system by which decisions regarding the award of research grants and training funds are made is greatly enhanced by the outstanding work done by the full time scientifically trained professional staff of the Institutes and the NIH unit which is responsible for the majority of the initial scientific review activities, namely the Center for Scientific Review.

Board of Scientific Counselors to Review Intramural Research

The studies of the scientists who do research in the intramural programs of NIH also are subject to a peer review process which differs somewhat from that described above. It is performed by Boards of Scientific Counselors composed of non-Federal scientists who have expertise and have made significant advances in the areas of research pertinent to each of the institutes. The Boards assess the research in progress, proposed research, and the productivity and performance of staff scientists. The Boards serve a dual function; they not only provide

expert scientific advice to institute Scientific Directors regarding particular projects and employees, they also assess the overall quality of the particular institute's intramural efforts.

Program Advisory Committees

In addition, a number of the Institutes and Centers have standing Advisory Groups, some of which are mandated to provide information and counsel in planning various programs of research needed to allow continued or accelerated progress toward fulfilling the goals of the Institute's mission.

Role of FACA

The initial scientific review groups, the councils or Boards, the Intramural Boards of Scientific Counselors and the Program Advisory Groups are chartered under the requirements of the Federal Advisory Committee Act (FACA) and the procedures followed comply with all the requirements of this legislation. In 1997, the latest year for which data are available, NIH had 141 chartered committees of which 21 were Advisory Councils and Boards and 28 provided program advice. The remainder were all engaged in peer review for scientific and technical merit.

NIH is continuously monitoring its peer review system, searching for better ways to assess scientific merit, and streamline its procedures while ensuring that we support research of the highest quality. At the same time, we are continually increasing our ability to communicate with members of the scientific community and the public. We have been providing information on the rosters of peer review groups, minutes of our national advisory

council meetings and the policies and procedures of our peer review system on the World Wide Web. We will continue to refine our methods for providing such information.

Conclusion

Mr. Chairman, our system of review of research has ensured that the more than 40,000 applications sent each year receive a fair, thorough, and rigorous review expected by scientists and the public alike. We take very seriously our role as stewards of the public's money and its trust. It is a labor-intensive system that is essential to the continuance of excellence in basic and clinical biomedical research. The NIH has played a major role in the explosion of new knowledge in human biology. We are proud that the scientists and clinicians whom we have supported and trained have emerged at the forefront of research discoveries and advances in our fundamental understanding of human biology, and of better ways to treat or prevent disease and promote good health. Mr. Chairman, this concludes my statement. I would be pleased to respond to any questions you may have.

Mr. HORN. Thank you very much for that very helpful statement. Mr. Solit, for the Department of Energy.

Mr. SOLIT. Mr. Chairman, thank you for the opportunity to testify before you today to discuss the Federal Advisory Committee Act. My name is James Solit and I am the Director of the Department of Energy's Executive Secretariat. I am also the Department's advisory committee management officer.

At present, the Department of Energy has 17 advisory committees providing advice and recommendations to the Department. As advisory committee management officer, it is my responsibility to monitor the Department's overall compliance with regulations governing the advisory subcommittee program. I also review and concur on advisory committee packages, sign advisory committee charters and, in coordination with the heads of the Department's programs, ensure that the membership of the advisory committees is fairly balanced.

Within the Department, the designated Federal official from each program office assists the committees in the organization and management of meetings and in the approving of expenditures for each committee's operation. The Department of Energy's program officers determine the need for advisory committees, rely on their advice and recommendations, and monitor the activities of the advisory committees that operate under their jurisdiction. They fund the advisory committees from their program dollars.

Dollars spent on advisory committees are obviously not available for other purposes, so extensive use of advisory committees within the Department is a good measure of how important these offices believe such committees are to their effective operation.

As indicated in your invitation to testify, overall you are interested in whether the original purpose of the Federal Advisory Committee Act to ensure openness and accountability when the government solicits the advice and expertise of private citizens is being fulfilled. With respect to the Department of Energy, we believe that it is. We believe that openness in general, including compliance with the Federal Advisory Committee Act, characterizes the conduct of the Department of Energy toward its stakeholders.

In the wake of the cold war, we have been engaged in a broad range of activities to open our archives and enhance accountability to the American public. We support the kind of openness in the operations of government that are envisioned in the Federal Advisory Committee Act and openness in government in general. We believe we would not be able to effectively fulfill our mission and serve the American public without relying on advisory committees for their diverse and extensive knowledge and experience.

We are committed to compliance with the Federal Advisory Committee Act, but it is important to note that fulfilling the letter and intent of the act can be challenging when dealing with types of highly technical, highly classified activities in which the Department engages. The Department has, from time to time, had to take special care in obtaining advice from individuals outside the Department to make sure that compliance was maintained.

For example, after the Chernobyl accident, the Department sought advice from outside advisory experts on the safety of a nuclear reactor operated by the Department, which also had a graph-

ite moderated core. The need for advice on a very rapid basis involving classified weapons facility made the use of a Federal Advisory Committee Act committee impractical. The use of these outside experts resulted in a legal challenge that the Department was circumventing the Federal Advisory Committee Act.

Your letter of invitation also expressed a particular interest in the Department's use of site-specific advisory committees. The site-specific advisory committees or boards to which you refer are operated under a single charter established for the Environmental Management Site-Specific Advisory Board, one of the Department's advisory committees. There are 12 site-specific advisory boards across the Nation at the sites of former nuclear weapons installations that operate under this charter.

Although there is much diversity of view within and among site-specific advisory boards, all share the same purpose of providing DOE managers with advice on future use, risk management, economic development and budget prioritization activities at these sites.

While it would not be fair or accurate to characterize one advisory committee as more important than another, the Environmental Management Site-Specific Advisory Board is unique. In total across the Nation, the site-specific advisory boards have the largest membership of any of the Department's advisory committees. This is because despite the commonality of cleanup issues among all of the former nuclear weapons productionsites, there are also many issues that are specific to a particular locale, calling for a broad degree of local public participation.

For example, cleanup activities at these sites are often governed by unique intergovernmental compliance agreements entered into by the Department, State regulatory agencies and regional officials from the Environmental Protection Agency.

The total cost of the environmental management program is estimated to exceed $170 billion and involves unique technical, regulatory, and policy issues. Our support for the site-specific advisory boards and the Environmental Management Advisory Board represent an important investment in finding solutions to these problems.

In the case of the Fernald site in Ohio, for example, we believe through our use of a site-specific advisory board, that we will be able to save upwards of $2 billion and significantly accelerate the pace of cleanup activities.

Over the last 5 years, we believe the site-specific advisory boards have helped to establish public trust and confidence in the Department's environmental management program and we look forward to continuing our work with them.

Mr. Chairman this concludes my oral statement. I would be pleased to answer any questions you may have.

[The prepared statement of Mr. Solit follows:]

Mr. Chairman and Members of the Subcommittee:

It is a pleasure to appear before you today to discuss the Federal Advisory Committee Act.

Background:

Since its establishment in 1977, the Department of Energy has relied on advisory committees to provide external advice and recommendations on its programs. The advice that has been provided has helped the Department make better decisions with input that would not otherwise be available from federal staff alone. The advice of advisory committees has ranged from providing broad recommendations regarding the Department's missions in science and technology and environmental management to advice on narrow regulatory areas, such as rulemakings.

In making decisions, it is important for the Department to incorporate a broad cross-section of opinion and experience. The Department of Energy would not be able to effectively fulfill its missions and serve the American public without relying on its advisory committees for their diverse and extensive knowledge and experience.

At the present time, the Department of Energy maintains 17 advisory committees. Of these, five are statutorily mandated committees; and 12 are discretionary. Attached to this statement is a table showing the Department of Energy's advisory committees, the size of the membership, and the program office to which they report.

The Department has an Advisory Committee Management Officer who is also the Director of the Department's Executive Secretariat. This individual is assisted by one other individual whose full-time responsibility is to oversee the Department's management of the advisory committees. Funds are not separately requested for advisory committees. The program offices usually fund advisory committees from within their program dollars.

Each advisory committee has a Designated Federal Officer who is responsible for the day-to-day management of each committee. This individual is responsible for, among other things, organizing meetings, and monitoring and approving expenditures.

The Department of Energy supports the kind of openness in the operations of government that are required by the Federal Advisory Committee Act. We believe that it is important for Government to have the trust and confidence of the citizens who rely on its products and services, and that open communication is essential to this goal. In selecting members for an advisory committee, we search for individuals with specific knowledge and

experience, a willingness to serve, an interest in the issue to be addressed and those who represent as broad and diverse a cross section of Americans as possible.

In 1993, President Clinton issued Executive Order 12838 which required all federal agencies to reduce by one-third the number of their discretionary advisory committees. The issuance of the Executive Order coincided with our plans to terminate approximately seven discretionary committees. Although we do not now have the flexibility to create advisory committees as easily as we have in the past, the number of committees allowed has been adequate and the mandated reduction did not negatively impact the chartering of new advisory committees.

The Advisory Committees

Some of the Department's advisory committees have been in existence for many years. For example, the National Petroleum Council (NPC), a body chartered to provide advice, information and recommendations on matters relating to oil and gas and the oil and gas industry, has been in existence since 1946, when it was established at the Department of the Interior. It was transferred to the Department of Energy when the Department was organized in 1977. The Department still relies on the National Petroleum Council for advice. Last month, for example, the Secretary of Energy requested that the National

Petroleum Council undertake an assessment of the United States refining industry's longer-term economic viability and continuing capability to meet the growing consumer demand for petroleum products. The Department is concerned that a trend toward reduced investment in this sector may take place and that it may accelerate as foreign competition grows and new environmental requirements are imposed.

We are in the process of establishing a new advisory committee, the Nuclear Energy Research Advisory Committee. Should the Department receive funding for this program in FY 1999, this committee will be chartered to guide the strategic focus of research, including advice on long-range plans, priorities, and strategies to more effectively address the scientific aspects of nuclear energy research and development, with emphasis on both evolutionary technologies and innovative concepts. We will take the advice of this committee and determine the best direction for the nuclear energy research initiative, the nuclear energy plant optimization program and the university nuclear engineering program.

The size of advisory committees varies, depending on the function they are asked to perform. The smallest advisory committee is the National Electric and Magnetic Fields Advisory Committee, a joint committee of the Departments of Energy and Health and Human Services. This ten-member committee addresses issues regarding the direction of research into the effect of electric and magnetic fields on health and safety. The health

and safety of individuals living near electric and magnetic fields have been the subject of much recent public interest.

An advisory board also supports the Department's efforts to cleanup the 50-year environmental legacy left at the industrial complexes where nuclear weapons were designed and manufactured, which we now know is expected to be among the most costly environmental problems in the world. If the waste is not responsibly managed, this waste and nuclear materials could seriously threaten the health and safety of millions of American citizens.

The board was created in response to recommendations from a broad range of stakeholders. In the period 1991-1996, the Department participated in an interagency Federal Facilities Environmental Restoration Dialogue Committee which included representatives from Federal agencies, Tribal and state governments and associations, and local and national environmental, community, and labor organizations. The committee was established to develop consensus recommendations aimed at improving the Federal Facilities Environmental Restoration decision-making process to ensure that cleanup decisions reflect the priorities and concerns of all stakeholders. An interim report was issued in February 1993, including the consensus recommendation and guidance to establish site-specific advisory boards to help coordinate community input into the decision-making process for cleanup.

This report resulted in the chartering of the Environmental Management Site-Specific Advisory Board which is comprised of 12 site-specific advisory boards. Combined, the site-specific advisory boards have the largest membership of all of the Department's advisory committees. They operate under a single charter and are located throughout the country at the sites of former nuclear weapons installations. Each site-specific advisory board is responsible for providing external advice on environmental management issues appropriate to the specific site. Although there is much diversity of view within and among site-specific advisory boards, all share the common goal of assessing future use, risk management, economic development and budget prioritization in support of cleanup activities at the sites.

Examples of How The Department of Energy Uses Advisory Committees

Of the Department's 17 advisory committees, three are characterized as national policy issue committees. 13 as scientific and technical program committees, and one as a non-scientific program advisory committee. We rely on the membership of these advisory committees for the knowledge and experience that they bring to particular issues.

The Secretary of Energy Advisory Board

The highest level external advisory committee at the Department of Energy is the

Secretary of Energy Advisory Board (SEAB) chartered in 1990. Its mission is to provide timely, balanced, external advice to the Secretary on the Department's basic and applied research and development activities, issues relating to economic and national security policy, operational issues and other activities and operations as directed by the Secretary. The SEAB is chaired by Dr. Walter Massey, the president of Morehouse College. The current SEAB includes two Nobel Laureates, a Pulitzer Prize winner and senior representatives from academia, business, public and environmental interest groups, labor and Federal/State government.

The advice and recommendations of the SEAB have directly influenced the Department's policies and its efforts to improve efficiency. In 1995, a subcommittee of the SEAB examined alternatives for redirecting the scientific and engineering resources of the Department's National Laboratories toward the economic, environmental, defense, scientific and energy needs of the nation. The subcommittee's recommendations were adopted by the SEAB and implemented by the Department of Energy. For FY 1996 and 1997, this has yielded $ 803 million in cost savings attributed to improved laboratory management, reduced reporting requirements and the realignment of laboratory programs.

The SEAB's Task Force on Electric System Reliability produced a number of reports on key policy issues, some of which have been incorporated into the Administration's proposed Comprehensive Electricity Competition Plan.

The SEAB's Openness Advisory Panel provided advice on the status and strategic direction for the Department's classification and declassification programs as well as other aspects of the Department's efforts to enhance openness in government. The Panel's recommendations have been instrumental in enabling the Department to develop responsible policies and procedures in this area.

Energy Research Advisory Committees

The Department has four advisory committees that provide independent advice to the Department regarding the complex scientific and technical issues that arise in the planning, management, and implementation of the diverse research programs funded by the Office of Energy Research. These advisory committees periodically review the research programs under their purview; develop recommendations for changes in program content based on scientific and technological advances or other factors; and provide advice on long-range plans, priorities, and strategies, appropriate levels of funding to implement those strategies, and the appropriate balance among competing elements within each of the Energy Research programs.

An example of one of these committees is the High Energy Physics Advisory Panel (HEPAP). In October 1993, Congress canceled the Superconducting Super Collider project, precipitating the need to redirect the U.S. High Energy Physics (HEP) program. In May 1994, HEPAP issued a report entitled "Vision for the Future of High-Energy

Physics". HEPAP not only recommended significant participation by the U.S. in the Large Hadron Collider accelerator and detectors being constructed at the European Laboratory for Particle Physics at an unprecedented scale, but also that the United States should commit to the Large Hadron Collider even under a constant level-of-effort budget.

Subsequently, the DOE and the National Science Foundation signed an international agreement with the European Laboratory for Particle Physics in December 1997, in which DOE and the National Science Foundation agreed to provide funding of $450 million and $81 million respectively for the United States Large Hadron Collider efforts. The HEPAP report was critical to developing a consensus within, and a new direction for, the United States HEP program, for securing Congressional and Administrative support for the United States Large Hadron Collider participation, and for European Laboratory for Particle Physics in convincing its member states to accept the United States participation in the Large Hadron Collider.

Environmental Management Site-Specific Advisory Board (EM SSAB)

The EM SSAB was chartered to focus on broad policy issues including environmental restoration, waste management, and technology development. The 12 site-specific advisory boards that comprise the EM SSAB provide input and recommendations on

difficult and sometimes controversial national and site-specific environmental issues, such as future use of DOE properties, risk management, cleanup levels, economic development, and budget prioritization activities. Because of these responsibilities, the site-specific advisory boards serve as critical vehicles for communities to be informed of and to influence environmental management decisions. Over the last five years, the site-specific advisory boards have helped to establish public trust and confidence in the Environmental Management program and the Department of Energy, and, in general have worked effectively with the Department, state regulators, and the Environmental Protection Agency to address cleanup options under the Superfund Law.

The Department recognizes that the cost to maintain these boards is significant. However, the breadth of issues is immense, regularly including problems of local, national, and sometimes international, importance. In addition, the site specific advisory boards have made over 300 recommendations over the past four years, resulting in significant savings. Moreover, the complexity and the critical nature of the issues that the boards address, and the need to obtain support for advancing the Department's cleanup mission, make such an investment worthwhile.

The relatively high cost of the site-specific advisory boards is also attributed to the fact that they are comprised of more than 200 members--approximately one-quarter of the Department's total advisory committee members--and these members are geographically

dispersed across particular regions. For example, the site board at the Department's Hanford site is comprised of members from three states--Washington, Oregon, and Idaho all regions that are directly affected by the Department's work to cleanup Hanford's 560 square-miles along the Columbia River in eastern Washington.

We believe it is important to try to maintain a workable and efficient size for these boards. However, we also believe we should not unduly restrict the size of the site boards at the potential cost of achieving the necessary consensus that governmental decisions should have. Broad participation also allows communities to rely on the fact that all sides of an important issue have been effectively presented and heard by the Department of Energy.

The Office of Environmental Management conducts independent evaluations of the site-specific advisory boards. These evaluations have helped us understand the uniqueness of site-specific conditions, as well as identify and act on opportunities for improving the boards.

Challenges

The work of the Department of Energy's advisory committees, and our operations in

compliance with the Federal Advisory Committee Act, present challenges that we must address.

The total cost of operating the 12 site-specific advisory boards is high. However, in addition to the inherent value of opening the decision-making processes of the government and increasing trust and confidence in our work, the use of the site-specific advisory boards has provided valuable advice to DOE, balancing the costs and benefits of alternatives for cleanup in ways that have saved or will save taxpayers billions of dollars.

For example, board members near the Fernald site in Ohio recommended an accelerated cleanup plan that would expedite the process and could save the Department approximately $ 2 billion over original estimates. In addition, board members from both Fernald and the Nevada Test Site have collaborated on a decision regarding shipping Fernald waste to the Nevada Test Site--both boards recommended keeping much of the contaminated materials in disposal cells on the Fernald site rather than shipping to Nevada for disposal. This eliminated the need to ship 10,000 truck loads of waste between Ohio and Nevada saving hundreds of millions of dollars. In 1996, the Hanford Advisory Board advised against constructing new high-level waste storage tanks. As a result, the site is repairing the existing tanks, translating into an expected savings of $200 million dollars.

Local officials are sometimes concerned that the site-specific advisory boards may duplicate the community representation that local officials are elected to provide; and that, in the worst case, unelected groups might make decisions affecting local communities. The Department of Energy acknowledges and respects the vital role and the rights and responsibilities of elected local officials to resolve local issues. For this reason, the Department has committed to working in partnership with local elected officials through a set of working principles relating to the roles and responsibilities of the Department of Energy and local governments. In addition, local, elected officials serve as "ex-officio" members of some boards. We believe that the site-specific advisory boards have generally improved efficiency by providing a specialized forum where the often complex issues regarding cleanup can be effectively discussed with the active participation of local communities.

With respect to the Openness Advisory Panel of the SEAB, our efforts to increase openness have raised concerns that security could be jeopardized if information is declassified too rapidly. We are aware of the possibility that the Openness Advisory Panel--by aggressively promoting openness and the declassification of information--could be viewed as helping a potential lapse in security occur. However, we believe that the work of our Openness Advisory Panel has helped promote the proper protection of information that really needs to be classified by reducing total the amount of classified material and enabling the taking of time to ensure the stringent protection of only the

Conclusion

We are willing to work with all of our stakeholders, to listen to their concerns and try to address them, and share with them the information upon which we base the decisions which impact directly on them. We believe this is the way to make the best decisions possible.

The Department of Energy supports the use of advisory committees, believes in their value and relies on their advice. As a result of the work of advisory committees, we believe we make better decisions, save and spend tax dollars more wisely and at the same time engender trust and confidence in the work of government.

I would be pleased to answer any questions you may have.

most sensitive materials.

Finally, in some situations, the Federal Advisory Committee Act presents an unnecessary obstacle to obtaining needed advice. One example is the use of peer reviews in the assessment of grant proposals received by the Department and of research in progress.

Grant proposals and research cover a wide range of topics in the areas of basic and applied research and development. Experts in a variety of highly specialized scientific and technical disciplines, who are not Federal employees, are called upon to evaluate applications submitted for each grant and results and plans for research projects. Should the experts act as a group and provide a consensus report of their advice and recommendations to the Department, provisions of the Federal Advisory Committee Act would apply.

However the requirements of the Act, such as openness, public participation and balance, may not be appropriate to the peer review process. The administrative requirements of the Act, such as chartering and notice, are burdensome when applied to one-time, single purpose meetings. Accordingly, the peer review process, as administered by the Department, often results in the submission of the individual viewpoints of each reviewer, rather than the more valuable advice and recommendations of a consensus report.

Department of Energy
Federal Advisory Committees

Discretionary Advisory Committees		Date Established	Program Support	FY 97 Total Members
1.	Advisory Committee on Appliance Energy Efficiency Standards	12/2/96	Energy Efficiency	29
2.	American Statistical Association Committee on Energy Statistics	10/17/84	Energy Information Administration	15
3.	Basic Energy Sciences Advisory Cmte	10/16/86	Energy Research	19
4.	Beryllium Rule Advisory Committee	6/9/97	Env., Safety & Health	23
5.	Biological and Environmental Research Advisory Committee	11/22/83	Energy Research	23
6.	DOE/NSF Nuclear Science Advisory Committee - Returned to NSF 10-97	9/30/77	Energy Research	17
7.	Environmental Mgmt. Advisory Board	1/24/92	Environmental Mgmt	29
8.	Environmental Management Site-Specific Advisory Board (12 site-specific boards)	5/16/94	Environmental Mgmt	215
9.	(T) Federal Advisory Committee to Develop On-Site Innovative Technologies for Environmental Restoration & Waste Management	12/10/92	Environmental Mgmt	0
10.	Fusion Energy Sciences Advisory Committee	4/18/91	Energy Research	19
11.	High Energy Physics Advisory Panel	1/13/67	Energy Research	17
12.	National Coal Council	11/21/84	Fossil Energy	132
13.	National Petroleum Council	5/3/46	Fossil Energy	161
14.	Secretary of Energy Advisory Board	1/2/90	Human Resources	27

Statutory Advisory Committees	Date Established	Program Support	FY 97 Total Members
1. (T) Advisory Committee on Demonstration and Commercial Application of Renewable Energy and Energy Efficiency Technologies	12/11/89 PL 9/10/90 Cht	Energy Efficiency	0
2. Hydrogen Technical Advisory Panel	11/15/90 PL 6/13/91 Cht	Energy Efficiency	12
3. (T) Metal Casting Industrial Advisory Board	10/15/90 PL 2/5/91 Chtr	Energy Efficiency	9
4. National Electric and Magnetic Fields Advisory Committee*	10/24/92 PL 1/14/94 Cht	Energy Efficiency	10
5. State Energy Advisory Board	10/18/90 PL 11/29/91 Chtr	Energy Efficiency	25
Inactive Statutory Advisory Committees			
6. Technical Advisory Committee on Verification of Fissile Material and Nuclear Warhead Controls	11/5/90 PL 5/14/91 Cht	N/A	0
7. Technical Panel on Magnetic Fusion	10/7/80 PL 5/18/90 Cht	N/A	0
GRAND TOTAL			**782**

*Will terminate by statute on 12/31/98

Key:

T = Terminated advisory Committee
PL = Public Law
EO = Executive Order
Cht = Charter

Mr. HORN. We thank you very much for that statement. Let me begin with just a few easy questions.

What do you expect to get out of the typical advisory committee in the Department of Energy? Is this simply a place where the responsible Federal official sits down with a group of experts outside of government, maybe ex-government employees, and they say, "Look, this is what we are thinking about doing, what do you think about it?" How often is that where you get a specific recommendation simply with the person who is going to—ultimately going to administer the authority of the Department of Energy but it is a sounding board? Or do you have another committee where they say, "Hey, wait a minute, we think that is the nuttiest thing we have ever heard of and here is why"? And do they commit that to writing, so that they make a recommendation one way or the other? What is your experience?

Mr. SOLIT. I think in the general sense, both of the statements you made are true. What we are looking for is advice and recommendations from individuals who have the kind of expertise that we do not have. And it can take a number of forms.

Mr. HORN. Well, if somebody in Congress or the President woke up one morning and said, "Gee, I'd like to know what they are getting on this advice," could you tell them what your last few committees had recommended, one way or the other? Do they write it into a minute that is approved by somebody?

Mr. SOLIT. Yes. Yes, they keep minutes but I would have to go to a particular advisory—designated management official of a particular advisory committee and ask the question of "What is the latest or what are you up to in terms of your advice from a particular committee? When was the last meeting? What came of it? What recommendation?"

Mr. HORN. Now, within Energy, I take it you got a copy of every minute that these committees put out, do you?

Mr. SOLIT. I personally do not get a copy of every minute but it is available to me.

Mr. HORN. Well, you're Director of the Executive Secretariat.

Mr. SOLIT. That is correct.

Mr. HORN. I would think if I were the Cabinet officer, you would have a copy of everything every advisory committee said on your watch and it ought to be in either the Cabinet officer's file room or the Executive Secretariat's working the paper on behalf of the Cabinet officer involved. So where do you find that?

Mr. SOLIT. I am not absolutely certain of the answer to your question.

Mr. HORN. Then what good is the advisory committee?

Mr. SOLIT. Well, the advisory committee is providing advice to the program office. The program office are the ones that are making the decisions for the Department of Energy that they need the advice from the advisory committees for.

The act of maintaining records of what occurred is the responsibility of the program office. Your question, I took it, was whether that information rests in one place in the Department of Energy. And I don't believe that it does, but I am not certain.

Mr. HORN. Well, I guess I'm coming from the viewpoint that if those advisory committees aren't helping the Cabinet officer that

the President puts in charge of that agency, why do we need them? And if they are helping him, they ought to be in either the Cabinet Secretary's file room or your file room if you function as, say, the Executive Secretary does in the Department of State, where they know everything that is going on and where it is.

Mr. SOLIT. Right. Well, they certainly are helping the Department of Energy. They are helping us make decisions.

Mr. HORN. Well, do they spell those recommendations out in a minute before they grab the plane and go back home?

Mr. SOLIT. Yes. Yes, recommendations are drafted and submitted.

Mr. HORN. Is that done generally by the political appointees or the bureaucrats that want cover? Do they write the minute or do the people who are on that advisory board write the minute?

Mr. SOLIT. The people who are on the advisory board write the minute or provide the recommendation, which is then given to the Assistant Secretary or the program official who is the head of that particular program. And then they make a decision with that advice and recommendation. Sometimes they're taken and sometimes they're not.

Mr. HORN. And if they're not, what do they tell the advisory committee? Do they send them a memorandum that said, "Well, we just can't accept your recommendation on that"?

Mr. SOLIT. I don't know the answer to that question.

Mr. HORN. Well, it sounds like you haven't read many of the advisory committee reports then.

Mr. SOLIT. The specific reports of the advisory committees? No, I have not, sir.

Mr. HORN. Right. Who in the Department of Energy reads those reports?

MR. SOLIT. Well, the designated management official in each program office reads those and is familiar with the work of each of the committees that the Department has.

Mr. HORN. Well, are those civil servants or political appointees?

Mr. SOLIT. Those are civil servants.

Mr. HORN. And how about the Assistant Secretary over that area? Does the Assistant Secretary ever see those advisory committee minutes?

Mr. SOLIT. I'm sure they are made available. I cannot say which and when and whether they actually read the entire thing or perhaps an executive summary. I do not know the answer.

Mr. HORN. Does GSA collect any information as to what good these are doing and who asks for them in terms of advisory committee records? Do we know if Assistant Secretaries, Deputy Secretaries, Under Secretaries, the Secretary him or herself, do they ever look at this stuff?

Mr. DEAN. Absolutely. Mr. Chairman. We have had the opportunity, in fact, to work with DOE to set up the site-specific boards in 12 locations. The reports of the advisory committees, for example, are rolled up at least once a year as part of the annual reporting process under the Federal Advisory Committee Act and provided to the agency head in that form. And, of course, that information is also provided to Congress.

I think it is important also to remember that there is kind of a natural flow of information from these advisory committees to the program official to the designated Federal officer that my colleague just mentioned, up through the program chain of command. And in this particular case that you're dealing with 12 entities impacting literally billions of dollars of transactions, the recommendations of the committee certainly have budgetary impacts and policy impacts. So the information travels up the chain in various ways, in various forms.

I cannot tell you that the minutes of every committee meeting, for example, make their way to the Secretary of Energy. In fact, they probably shouldn't. Otherwise, he would just spend his whole day reading advisory committee minutes.

Mr. HORN. They don't have that many committees, do they? Or do we need a fast speed reading lesson?

Mr. DEAN. Perhaps he could. I am not sure he has that much energy in Energy to read all the reports. But the point is that the act has a very definite control structure; the act has a designated Federal officer for a reason, and the designated Federal officer is intended to be both the control for the committee and the conduit of the committee to the policymakers, whether they are policymakers in the field or policymakers in the headquarters.

I don't think that it's probably appropriate in most cases to have all the records in one location. I think the staff and the committee generally communicate up what they think is important for the Department to consider.

Mr. HORN. Mr. Stevens, when the General Accounting Office went in to look at what this system is doing, did anybody ever ask the question: "Who reads it? What's happened? Has something changed as a result of this group meeting?" Et cetera?

Mr. STEVENS. We asked the members of the committees that, and by and large, more than 80 percent, they did feel that they were having an impact on the agencies or departments they were responding to. We also asked them how they got their message across; this is a specific question we asked. And about 70 percent said written reports, but they also use memorandums or letters and oral briefings and testimonies and presentations and that sort of thing. So it's not just a matter of formal written reports—they also had some ways of conveying advice less formally.

Mr. HORN. Do we know on an overall—as an overall generalization—what level of executive authority within these departments, bureaus, whatever, are the ones that are really working with those advisory committees? Based on what I've listened to on Energy, it doesn't sound like the Assistant Secretaries have a hand in this. And if they don't, I wonder, you know, who's making the policy around there.

Mr. STEVENS. I think the situation Mr. Solit described at Energy is not unusual. I would imagine there are one or two committees at the secretarial level to which the Secretary does pay a great deal of attention as the principal target. But then there are a number of other committees at the program level that are dispersed geographically in which someone at a lower level is the principal target. I think that is fairly common.

Mr. HORN. Did GAO ever interview the Secretary, the Department Secretary or any of the Assistant Secretaries in any Department to say what they are getting out of this particular committee?

Mr. STEVENS. Not in this work; no, sir.

Mr. HORN. Might you think of doing that the next round?

Mr. STEVENS. Certainly we could, yes.

Mr. HORN. It seems to me we ought to know whether this is making a difference in terms of the top leadership that the President has nominated and that the Senate has confirmed. It seems to me we ought to know if it is doing them any good.

I would think they are planting a number of people on those committees when vacancies come up. I think every administration does that. Because there's people they know, they trust, they might well have been involved in the campaign and written substantive memos that show that they do know something about a particular issue. And it seems to me that's what an administration ought to do, regardless of party.

Mr. STEVENS. Well, there are committees at which that is very much the pattern. In fact, there are Presidential committees, ones that the agencies have no discretion over setting up. The President does. I am sure those are given a great deal of attention. But then there are really some that deal with one particular watershed and perhaps two or three aspects, like the grazing rights and riparian rights. And those would really be just of local interest.

Mr. HORN. Do most of these committees that are established by departments in their charter talk about expertise in an area, or can one without that particular expertise be appointed to those committees?

Mr. STEVENS. In some committees, particularly those that engage in peer review, scientific and technical review, the expertise is by far the principal requirement.

In others, it's probably representativeness and therefore all walks of life would be the target membership. There's a great variety in these committees, Mr. Chairman.

Mr. HORN. What do you see, Mr. Wagner, when you look over the files?

Mr. WAGNER. I think Mr. Dean probably would have the better mix. I've tended to see those with expertise. But there are many kinds of committees out there.

Mr. DEAN. We have—many committees have people, of course, with expertise on the subject matter being addressed by the group. But in many cases, for example, I know that in the Department of Health and Human Services, for example, their Blood Products Committee, as a policy they include members of the public on those groups as well, who may or may not have any technical expertise at all. There are many committees that have a general public element to them and that oftentimes needs to be brought to bear to communicate other stakeholder requirements beyond the technical.

I think one of the important things to point out with the advisory committees in general is that the government is very good at doing technical analyses. I mean, that's what we are trained to do.

Mr. HORN. The government is very good at what?

Mr. DEAN. At doing technical analyses. For example, we know how to build bridges and build dams and we know how to construct

laboratories. But one of the things that advisory committees bring to this picture, and in fact this is one of the things that public involvement brings in general, is the sense of values at the local community and other things that Federal decisionmakers have to take into consideration in making effective decisions.

If it were just a matter of getting the right technical solution, that's—that's very easily done. But the real goal here, and one of the reasons why we are here today, is to find more effective ways to use different tools to build trust, to generate acceptable decisions that meet everyone's needs.

Mr. WAGNER. Mr. Chairman, if I could interject, there was a discussion about what data is available. I hate to show off the internet. Actually, I like to show off the internet. I think we have successfully brought up the Department of Energy committees. And then if we click on those items, you would be able to drill right down to see much of the material. So a lot of the information is available through the web. And notwithstanding that, that makes it——

Mr. HORN. How rapidly are they posted after a meeting?

Mr. DEAN. The current system, Mr. Chairman, is designed to accomplish an annual reporting task. Obviously, it contains a summary level of detail associated with the committee's accomplishments. We hope to expand this system in a number of ways during the next year or two.

Mr. HORN. Well, should we have it within 15 days of the meeting or something it be posted?

Mr. DEAN. The minutes?

Mr. HORN. Yeah.

Mr. DEAN. Actually, one of the changes—we were going to talk about our regulations later in the hearing, but one of the things that we are going to be doing in our regs is establishing a 45-day standard for all minutes, for example, is one of the items that came up during our last hearing on the National Academy of Sciences as a possible standard.

And as we move into next year, also as part of our assessment of changes to the act, we would also like to look at increasing the use of electronic information to make this information more quickly available to a larger range of people.

Mr. HORN. I'm skipping over NIH right now because I know you have specialized problems there that are rather unique. But in a way, the Department of Energy also has a number of specialized problems.

In your written testimony on page 15, you argue that the Federal Advisory Committee Act presents an unnecessary obstacle to the use of peer review groups. You note that the groups often meet only once, and offer advice as individuals rather than as a committee consensus.

Could you elaborate a little on these points and provide some reasons for why you feel this way based on experience?

Mr. SOLIT. Well, in evaluating grant proposals, we have sort of—we have taken a different path from some other agency. When the Department was first established, the Department of Energy Organization Act had some requirements with regard to the Federal Advisory Committee Act, and there were very, very stringent stand-

ards for closing meetings. And we came to develop a system of relying on the individual advice of experts, peer experts in evaluating grant proposals.

Now, if we got these experts together, the Federal Advisory Committee Act would come into play. And with regard to the evaluation of, for example, a single grant proposal, it might be a cumbersome exercise. And we can't get the joint advice of these people without chartering a committee under the Federal Advisory Committee Act. That was what I meant in the written statement.

Mr. HORN. Doctor, on the NIH situation, do you agree with the position taken by Energy on peer review groups? And what other reasons would you offer for their exemption from the Federal Advisory Committee Act?

Dr. KIRSCHSTEIN. Mr. Chairman, the consideration of individual research grant applications must be done in a confidential manner, and we do that. Our peer review groups are closed sessions under the Government in the Sunshine Act amendment of the Federal Advisory Committee Act. Under those circumstances, we consider that the material that is being reviewed by the committee members is the intellectual thoughts of the scientist who is involved in the activity and, therefore, must be viewed under confidential situation.

The parts of the National Advisory Council meetings, those are the statutory bodies of each institute that consider those grant applications, in the second level of review are also closed. But the parts of the council meetings—and there is one at every meeting, a section at every meeting, and they meet three times a year under statute—and in some cases in a couple of institutes, the Cancer Institute and the Heart, Lung, and Blood Institute, four times a year—there are parts that are open to provide for the advice overall of both the public members as well as the senior distinguished scientists about the programmatic aspects of what should be done related to heart disease in modern times, et cetera. So that we use both situations.

Mr. HORN. As you know, the NIH has been criticized by people that have not received the award on particular projects and particular programs that, well, they've stacked it with people that have one approach to solving the problem. How do you overcome that to show the outside world, Congress, the President, whoever, that you're fairly bringing all sides into this and not stacking the deck in one view of science and what they do at this point in time?

Dr. KIRSCHSTEIN. First of all, we seek nominations to our peer review groups very broadly. We ask people to say that they wish to be considered. We ask scientists and other people from a broad range of institutions. I myself was the director of one of the institutes for 19 years, and so I had very direct involvement in all of this.

In addition, as I said, people with one point of view who are on a committee can be countered at the advisory council level because we do have others there. And we also have a system by which a potential grantee who feels that he or she has not been treated appropriately can appeal the decision and have it reviewed.

Mr. HORN. How many times do those appeals win?

Dr. KIRSCHSTEIN. I cannot tell you exactly, but there have been many of those.

Mr. HORN. Could we get an answer filed for the record at this point?

Dr. KIRSCHSTEIN. I think so.

[The information referred to follows:]

NIH PEER REVIEW
REBUTTALS AND APPEALS

The NIH peer review system consists of two levels. The initial review group (IRG) reviews the grant applications submitted by the investigators for scientific and technical content. The National Advisory Council or Board of each Institute makes funding recommendations based on the information provided from the initial review.

For many years, if an investigator had concerns regarding the review process performed by the IRG, he or she would submit a rebuttal provided to the Advisory Council. The Council reserved the right to consider or not consider such a rebuttal. If such a rebuttal was denied, the investigator then could submit a detailed appeal to the Office of the Director (OD), NIH. The appeal was carefully considered resulting in a report back to the investigator, a process that often took more than a year. The new revised appeals process will be monitored continuously and carefully so that all investigators are assured that they have a fair review process. This process requires that the Institute staff attempt to resolve the appeals and present to the Advisory Council only those cases that have not been resolved.

Data for the past five years show that, out of approximately 30,000 grant applications reviewed each year, only .02 percent have resulted in a rebuttal or an appeal. Based on these data, shown in Table I, NIH decided to change its appeals policy into a more efficient, effective, and accountable system.

Table II shows the shows the breakdown of rebuttals and appeals by Institutes.

TABLE I

	Number of Rebuttals		Number of Appeal Cases Conducted by the OD
	Received	Considered by Council	
1993	675	347	7
1994	623	366	5
1995	581	295	5
1996	482	211	4
1997	600	263	3

Table II

Rebuttals Received (R) by Institutes and Considered (C) by Councils, 1993-1997*

	1993		1994		1995		1996		1997	
	R	C	R	C	R	C	R	C	R	C
NIA	3	0	2	0	4	2	9	0	1	0
NIAAA		6		6		6		6		3
NIAID	78	17	73	12	52	11	37	14	63	32
NIAMS		29		32		16		7		5
NCI	85		63		45		36		67	
NICHD	14	1	8	0	9	1	6	5	11	6
NIDA			0	0	2	0	2	0	7	3
NIDCD	14	0	15	0	26	5	27	10	25	2
NIDR	2	2	2	2	7	7	1	1	1	1
NIDDK	90	90	121	121	69	69	49	49	45	45
NIEHS	14	2	14	5	7	2	16	5	14	6
NEI	0	0	2	2	7	7	3	3	2	2
NIGMS	111	111	91	91	76	76	41	41	80	80
NHGRI	90	61	62	42	100	64	57	32	74	50
NHLBI					49	8	46	11	82	10
NIMH	3	3	3	3	1	1	4	4	4	4
NINDS	149	3	140	3	116	8	130	5	114	4
NINR	2	2	3	3	0	0	1	1	1	1
NCRR	2	2	2	2	3	3	4	4	3	3
NLM	0	0	0	0	0	0	0	0	0	0
FIC	18	18	22	22	8	8	13	13	6	6
NIH	675	347	623	366	581	295	482	211	600	263
OD Appeals		7		5		5		4		3

*All rebuttals, whether considered by Advisory Councils or by Institute staff are resolved, either by the grant application being reviewed again by an initial review group or by the staff member working with the principal investigator (scientist) in improving the application prior to resubmission.

Mr. HORN. I'd like to know how many appeals different scientists have made, by institute, where their appeal has been sustained and the committee's view has been overridden.

Dr. KIRSCHSTEIN. Yes, sir. There are two places at which that can happen. One is at the advisory council level, because the regulations and the activities that we engage in related to the councils do not permit a grant award to be made if the council does not concur with the recommendation of the original peer review group. The council can make recommendations for concurrence, rereview, or nonconcurrence, and then the institute takes the procedure from there.

Now, not every concurrence results in an award because there may not be sufficient funds. But the council has that authority.

Then—and many potential grantees will write a rebuttal to the review of the initial review group which the council will consider. And I myself know that at council meetings that I chaired, there was very often sustaining of the potential grantee's opinion and then a reconsideration.

Mr. HORN. I'm now going to yield to the gentleman from Ohio, Mr. Kucinich, who can proceed with his questions.

Mr. KUCINICH. Thank you very much. I have——

Mr. HORN. And if you have an opening statement, I will be glad to put it at the beginning, as if read.

Mr. KUCINICH. I would appreciate it if the chairman would place in the record, as read, my opening statement.

Mr. HORN. Without objection, so ordered.

[The prepared statement of Mr. Kucinich follows:]

For Record

OPENING STATEMENT OF
THE HONORABLE DENNIS J. KUCINICH
GOVERNMENT MANAGEMENT, INFORMATION, AND TECHNOLOGY
HEARING ON
THE FEDERAL ADVISORY COMMITTEE ACT

July 14, 1998

Our government has a long history of relying upon the expertise of private citizens for policy advice. In 1794, George Washington appointed a group of private commissioners to advise him on the appropriate response to the Whiskey Rebellion. Today, there are nearly 1,000 advisory committees established to provide advice to Congress and the Executive Branch.

In 1972, Congress passed the Federal Advisory Committee Act in order to ensure that advice to the government was not provided information behind closed doors, and to make sure that special interests did not have undue influence on public policy. The law also responded to concerns about the cost and accountability of these committees by establishing procedures to limit their formation and to disband them in a timely fashion when their purpose was fulfilled.

I commend Chairman Horn for holding this hearing. With last months hearings on the Freedom of Information Act, and this month's hearings on the FACA law, this committee is developing an impressive record of ensuring citizens are involved in and informed about decisions made by the federal government.

We will be hearing from two panels today. The General Services Administration (GSA), which has responsibility for implementing the law, will be on the first panel. GSA reported that in FY 1997, there were 963 active advisory committees, and the federal government spent over $170 million on these committees. We will hear about their efforts to reduce the number of unnecessary committees, and determine if these committees were worth the expense. GSA will also be responding to concerns that they have not adequately implemented the law.

We will also hear from the General Accounting Office. GAO has recently completed two studies of the FACA law. The first study focused on GSA's implementation of the law, while the second focused on the satisfaction of participants in existing advisory committees, and the agency staff that rely upon them for advice. I am particularly concerned about GAO's findings that in some cases, the FACA law acts as a barrier to receiving input from all interested parties rather than an incentive to ensure that all views are well represented. We will learn about the extent of this problem, and will hopefully take steps to rectify it and allow the FACA law to work as intended.

The National Academy of Sciences (NAS) will also be appearing before the committee today. In 1997, Congress amended FACA in response to concerns that it would hamper the Academy's independence. This compromise legislation excluded the NAS from many of the FACA's requirements, but also established new requirement to provide the public

with more information and more input into NAS decisionmaking process. We will determine if the 1997 law is working as expected, and if the law is helping the NAS in serving the public interest.

Finally, we will be hearing from several users, participants, and experts on advisory committees. These users will give us a first person perspective on the implementation of the FACA law, and the value of advisory committees.

Successful policymaking requires input and advice from knowledgeable, independent experts. The Federal Advisory Committee Act was designed to provide the government with an effective way of obtaining that advice. Today's hearings will allow us to determine how well the law is working, and how to make it work better. I commend Chairman Horn for holding these hearings, and for his continuing efforts to ensure that the federal government is responsive to the concerns of the public it serves.

Mr. KUCINICH. Thank you very much, Mr. Chairman. And thank you for holding this committee meeting, Mr. Chairman, and my colleague, Mrs. Maloney.

I have an opening question for the GAO. The study that's been released today indicated that a significant number of committee meetings were not open to the public. Did most of the respondents in the survey believe that was appropriate?

Mr. STEVENS. Yes, I believe as a general statement that's true. But it's especially true of the peer review committees, and they were almost all closed. I would think that almost everybody who was involved in peer review committees, and I think the NIH testimony would bear this out, believes that there are matters of privacy and proprietary information, that if they were held in open session would greatly inhibit the discussion.

So, yes, I don't believe that the members felt that they should be more open than in fact they were.

Mr. KUCINICH. Well, are Federal agencies keeping the public away from critical meetings then?

Mr. STEVENS. We certainly didn't get that from our survey of either the members or the agencies themselves. The act does provide for closing meetings when it's appropriate, and both the agencies and the members that we surveyed felt that those decisions were being made carefully and not in the sense of being overly cautious or private about it.

Mr. KUCINICH. But if there's a process that takes place behind closed doors, how are we to make any assessment of it?

Mr. STEVENS. Well, we can ask them, as we have done. I believe the records would be open to GAO auditors. If you would like us to double-check the kinds of judgments they made, that's the kind of work we could readily do.

Mr. KUCINICH. If assessments and decisions are being made behind closed doors, how are we to know whether or not special interests are having undue influence on public policy?

Mr. STEVENS. Well, you do have the members themselves who are selected to be fairly broad and representative. That is one of the standards of the selection process. And I believe we would hear some assertions to that effect from the membership that, in fact, we did not hear. We talked to 600 members, or got interviews from 600 members, and I must say there was no sentiment that games were being played or that this was a stacked process in any way.

Mr. KUCINICH. I don't know if it's so much a matter of games being played, but we are talking about advisory committees, which are staffed or which its membership——

Mr. STEVENS. They do use Federal funds.

Mr. KUCINICH [continuing]. Is private citizens and with people who have particular expertise. Now, it goes without saying that someone would lend their expertise to work on a particular committee, that it's possible that expertise would necessarily color their experience and the decisions which they would make.

So with that in mind, my concern as I will repeat again, is that what kind of mechanisms are in place to make sure that special interests don't end up with any undue influence on public policy?

Mr. STEVENS. Well, first of all, about half the committees, the meetings are open. And the other half, they are not. The ones that are not——

Mr. KUCINICH. Let's talk about the half that is not.

Mr. STEVENS. Pardon me?

Mr. KUCINICH. Talk about the half that is not.

Mr. STEVENS. The half that are not are very heavily peer review committees, and the Government in the Sunshine Act does have a specific set of criteria that have to be applied. You have to say exactly which one of these exemptions to openness you are using. It could be proprietary data. It could be national security and security concerns. It could be privacy and invasion of—if you talk over somebody's grant performance in the past, that might not be a matter of public record. There are, I believe, five or six such exemptions and the decision to close a meeting has to cite a specific one. We didn't audit that particular decision, but it would be a fairly easy matter to do.

Mr. KUCINICH. I think it would be helpful if you did that, because the reason for the law in the first place, the reason for the law which governs Federal advisory committees, is to ensure that citizens are involved in and informed about the decisions made by the Federal Government.

So, if you could do anything that would provide any additional comfort to the people, it would be certainly helpful for us to have that information.

Mr. STEVENS. We could certainly look into that, Mr. Chairman. And I am informed by the current GSA report that over 90 percent of the committees that are not in the Defense Department, Health and Human Services, most of which are in NIH, and the National Science Foundation, are indeed open. So perhaps concentrating on those agencies—Defense, Health and Human Services, and NSF—where the meetings are more commonly closed, would provide the best test.

Mr. KUCINICH. I guess one other question that I would have is how can Congress best ensure that the GSA adequately implements the provisions of the act?

Mr. STEVENS. I think it was a progressive step to ask GAO to evaluate that for you, and we have issued a report that fairly frankly says there were some shortcomings in that regard. I think you have the responsible official here who is prepared to present the agency's point of view on that and, as I said, GSA does make some commitments that this committee could well followup on in another hearing.

Mr. KUCINICH. Do you have any other suggestions other than what is in the report?

Mr. STEVENS. A good point was made that a couple of these requirements are somewhat impractical; for instance, getting the report to the President in 3 months. And there's, I believe, a formal legislative suggestion that it be extended. There's been a bill introduced in the Senate, and perhaps other legislative means would also be called for.

Mr. KUCINICH. Thank you very much, Mr. Chairman.

Mr. HORN. Let me pursue a few areas on NIH.

Your written testimony didn't really directly address the recent increases in advisory committee membership. What increases in advisory committee membership has the National Institutes of Health experienced in recent years?

Dr. KIRSCHSTEIN. Mr. Chairman, the increases in membership that are reported are an administrative change. The actual members of our standing committees, primarily the initial review groups and the advisory councils, has remained essentially constant for some 10 years.

However, in past years, prior to 1991 when there was a General Accounting Office report, we found that some of the scientific areas that needed to have peer review were not covered by our standing committees and we were using what we then called ad hoc committees. On the advice of the General Accounting Office, we began to charter what we are now calling special emphasis panels, groups of individuals who, dependent on the particular scientific area—and our science is burgeoning very, very rapidly—are called together for a single meeting to review a single group of applications in a particular area that is new and emerging: the genome project as it was emerging, some of our new activities related to medical rehabilitation of disabled individuals, some activities related to bioengineering, which for us is a broadened area. These individuals are members of these special emphasis panels which are chartered, but only used for this advice once, and we were, on the advice of the GSA, up to a certain point in time, reporting these individuals as consultants.

In the last 2 years we were asked to change to report them as members and that has caused the major increase in the number of members reported. That is really an administrative change.

Mr. HORN. How do those special emphasis panels compare to what you used to have an initial review group? Are they one and the same?

Dr. KIRSCHSTEIN. They are very similar. The difference, however, was that we can, with much more flexibility, with great dispatch, call these individuals together when the scientific area demands the review. The science is diverse, it is getting to be much more multidisciplinary and interdisciplinary, and we can use people in such a way on a one-time basis.

Mr. HORN. What factors, other than rotating membership on the special emphasis panels, have contributed to the recent increases?

Dr. KIRSCHSTEIN. There are several others but they are not as major. In 19—in the early 1990's, the previous advisory committees of the Alcohol, Drug Abuse, and Mental Health Administration, which was a separate agency of the Department, were moved to the National Institutes of Health, as three new institutes which were part of ADAMHA were then moved, so that NIH had a group of committees that were brought to us.

At the time we said—and there was legislation that asked that we review the situation of how those grant applications to those three institutes were being reviewed and that we integrate into our more common review system that is run primarily by our Center for Scientific Review which used to be called the Division of Research Grants—that we integrate their activities into that.

In so doing, we integrated them with some of the other neurosciences to which they are related, and some of the increase may be due to that. That's also true for the behavioral sciences that were previously reviewed under the ADAMHA, the previous agency. I think those are the major reasons for the increase.

Mr. HORN. At NIH, in terms of both the peer review committees and the councils, is there a limit on the number of years they can serve on either of these?

Dr. KIRSCHSTEIN. Yes, sir.

Mr. HORN. What is it?

Dr. KIRSCHSTEIN. The term of appointment is 4 years and the members are staggered so that one-third of the membership turns over every year.

Mr. HORN. And do you have applications to apply for those positions? And if so, who makes the decision?

Dr. KIRSCHSTEIN. The actual appointments for the councils, the statutory bodies, are made by the Secretary upon advice of, first, the Institute Director and the Director of NIH. I review all those nominations also before I send them on to the Director of NIH.

For the peer review groups, we solicit requests for individuals to serve very broadly. We have on occasion published in the journal, Science, that we are looking for individuals. We talk to many members of the staffs of the institutes, we go to scientific meetings, and we go to our university colleagues and ask for nominations. We do not have a formal process.

But from that comes a large group. We watch very carefully for geographic distribution as well as diversity of membership.

Mr. HORN. Who signs off on that ultimately? The institute that is involved with that particular peer group?

Dr. KIRSCHSTEIN. No, the final decision is the Directors' for the peer review groups, and I review all of those as well.

Mr. HORN. You say the Directors?

Dr. KIRSCHSTEIN. The Directors of the Institute submit the slates of persons I review——

Mr. HORN. Work me through with the Heart Institute.

Dr. KIRSCHSTEIN. OK. The National Heart, Lung, and Blood Institute—let me take the peer review group, the technical review group. If it has some of those, and the major ones are in the Center for Scientific Review, they will submit a slate for a particular review group, Blood Committee, needed for some review and will put forth the names, the affiliations, and why they think those are important, including the curriculum vitae and the kind of work that those individuals have done as it relates to the science that they are expected to review.

That comes forward. It goes through our committee management office where it is looked at for the various—to make sure it fits the appropriate technical requirements. It is then sent forward. I review the names. I very often, if I do not think there is appropriate diversity of membership, send it back. And finally, after I have concurred, I send it to Dr. Harold Varmus, the Director of NIH, for his final approval and appointment.

Mr. HORN. So how much does the Director of the Heart Institute have——

Dr. KIRSCHSTEIN. It comes from him, the Director of the Heart Institute, up through his staff.

Mr. HORN. So then he has to clear the rest of the NIH bureaucracy.

Dr. KIRSCHSTEIN. Exactly. Exactly.

Mr. HORN. I'm just curious how that was working. Now, various congressional committees in the Senate and the House from one time or the other in the 6 years I have been here have talked about whether alternative medicine, for want of a better phrase, gets its airing. What can you tell me about that?

Dr. KIRSCHSTEIN. We have an Office of Alternative Medicine within the Office of the Director. Actually, although we have not changed the name, we think it is preferable to call it complementary and alternative medicine, because it is not the kind of——

Mr. HORN. It isn't either/or?

Dr. KIRSCHSTEIN [continuing]. Are very often complementary to those physicians, more traditional physicians use. That office has, by law, an advisory council which is—was established at the time the law was mandated. We have just finished the first turnover of the initial group that was appointed also for staggered terms of 4 years each, and turn over, and a new set of nominations has been submitted and actually approved. By law, that council must be appointed by the Secretary. It goes through the same—the same procedures. The Director of the Office of Alternative Medicine sends it to his supervisor, who is our Associate Director for Disease Prevention. He gets the list. Then through the Committee Management Office, it comes to me for consideration. I sometimes question them, and then it goes to Dr. Harold Varmus who questions that particular group quite carefully and finally decides on the persons.

Mr. HORN. Well, one of the questions that I think is obvious, is do you bundle all the people interested in alternative medicine in that one operation? It seems to me you ought to spread them around so somebody can ask the obvious question once in a while within the more established and traditional groups.

Dr. KIRSCHSTEIN. Well, as a matter of fact, that works in a slightly different way. First of all, one of the things we try to do is to appoint some people who are not necessarily advocates of alternative medicine to that council so there is a mix. But second, the Office of Alternative Medicine's budget—I am sorry; let me backtrack. The Office of Alternative Medicine does not have the authority to award grants. Those grants must be awarded through our—any one of our institutes and through the advice of a council of that institute. So that the grant applications, after being—undergoing peer review, go to the appropriate council.

I'll give you an example. We are—the Office of Alternative Medicine is now studying the use of something called hypericum, or St. John's Wort, which has been purported to have an influence on mental depression, depressive disease. That application was submitted and the council of the—National Advisory Mental Health Institute reviewed that application and it has, of course, people who are not advocates of alternative medicine. And it approved and that was then awarded. The Office of Alternative Medicine transfers the funds which it has had appropriated to it to the Mental Health Institute.

Mr. HORN. Well, I'm curious if people of distinction who, let's say, would be lumped——

Dr. KIRSCHSTEIN. Excuse me, sir? I couldn't hear you.

Mr. HORN. I said if people of distinction are to be lumped into, say, the alternative medicine group, I'm curious whether there is a voice for that in each of those institutes, or are they all just shunted off in one area and say, well, that takes care of them?

Dr. KIRSCHSTEIN. No, I don't think so. Because the institutes all have staff people who attend the meetings and who go back to their institutes and talk about it. And we are beginning to see more and more activity within the institutes in the complementary alternative area.

In fact, when I first——

Mr. HORN. But that seems to be staff driven, you are telling me. Or is that outside people?

Dr. KIRSCHSTEIN. It is outside driven as well as staff. We get a good deal of correspondence from people who want to make sure that we are considering those areas. And we have been working very hard in that area.

Mr. HORN. So, can you tell me that every institute under NIH has someone on the council, or at least some of the peer review groups, which could be labeled as someone that believes in alternative medicine?

Dr. KIRSCHSTEIN. No, I cannot tell you that and that is not true. It has someone on the staff who will present the activities related to alternative medicine to the council. It has members of the council who certainly have ideas that are both pro and con related to alternative medicine. It has seen the applications go to the council, and we have had funding of many of them.

When we do the peer review of alternative medicine grant applications, we try to get both individuals who have great interests in and have been practitioners, if you wish to call them, of alternative medicine, as well as others. But in order to be sure that the person who has submitted his or her grant application does not consider that the quote-unquote "deck is stacked against him," we have to be sure that there are sufficient experts and advocates of alternative medicine to do the peer review. It is a difficult line in this situation.

Mr. HORN. Well, are there institutes—there's how many institutes now? A dozen or 13?

Dr. KIRSCHSTEIN. Twenty-two.

Mr. HORN. Twenty-two. Are there people on those 22 councils—each has a council; right?

Dr. KIRSCHSTEIN. That's right. No, 21. The Center for Scientific Review doesn't have a council mandated by law.

Mr. HORN. So 21. There are 21 institutes, and you're telling me that really hardly any of them have people that would be considered to raise questions about some of the traditional ways we are doing things?

Dr. KIRSCHSTEIN. Oh, there are many of them who will raise questions about the traditional ways that things are being done. We find over the years, and I did, that scientists discuss things very openly and raise all sorts of questions.

I am saying that I don't think that at the present time, any one of the councils of those 21 institutes has specifically had an individual appointed or nominated who is an advocate particularly of complementary or alternative medicine. That is something perhaps we should consider. But at the moment that is not true.

Mr. HORN. Well, I think you should. I guess I come out of the context where you believe in free speech and sometimes the people you ought to listen to are your critics, not your supporters.

Dr. KIRSCHSTEIN. I agree with you.

Mr. HORN. And I think the National Institutes of Health, which we have richly rewarded in this Congress and the previous Congress—that's the most protected budget around here. Nobody messes with Mr. Porter's budget as it comes out of his subcommittee. And we agree with him on that.

But, on the other hand, we want free speech and the exchange of ideas and not just, you know, a group that's got a monopoly on something.

Dr. KIRSCHSTEIN. I agree, sir.

Mr. HORN. Well, if you agree, can something happen?

Dr. KIRSCHSTEIN. I hope so.

Mr. HORN. So the next year, we can ask that question and get a different answer, where you will have more people spread around there who can raise serious questions. I am not talking about putting nuts anywhere, whether they be traditional nuts or nontraditional nuts. But somebody that has a record of distinguished approaches to this, and you are seeing it every day in some aspect of medicine where something that people laughed at 20 years ago, those people prove to be right. And I just want to see that voice somewhere around.

In reports to Congress, as I understand it, Mr. Wagner, the President must report to Congress on action or inaction taken in response to the recommendations of Presidential advisory committees. And GAO has raised the concern that this requirement is not being followed.

In your written testimony on page 7, you note plans for reporting on this in your data base. What about calling the agencies responsible for the committees to ensure that these reports are simply completed as required?

Mr. WAGNER. Mr. Chairman, I think Mr. Dean will do a better answer than I can on this one.

Mr. DEAN. To be quite honest, Mr. Chairman, we were quite surprised that the agencies were not complying with section 6(b) of the act. One of the things we plan to do right away, in addition to the actions we outline on page 7, is to initiate a cleanup campaign, if you will, during the next several months and go back 2 or 3 years and have the agencies actually file the reports that they were supposed to file with the Congress in the first place.

We have been advised—in our discussions with the agencies we have received various thoughts on this. One of the things that the agencies have brought to our attention is that in some cases 6(b) reports seem to be redundant with other modes of communication with Congress in today's world. For example, Presidential committee recommendations go almost immediately from the committee to

the Congress in the form of a hearing or other kind of report or mechanism, obviating the need for a 6(b) report perhaps.

The GAO report also indicates in a survey that there are several reports that are required by the act, this one among them, that we may want to take a look at and work with this subcommittee and the Congress as a whole to make sure that we don't unnecessarily continue a report that may not be useful to you.

But we will make the commitment in this area as well as the other area that the GAO has highlighted to complete, if you will, a cleanup of the records and a cleanup of the delinquent reporting requirement that the GAO identified by the end of the calendar year.

Mr. HORN. Well, my next question would be the obvious. Do advisory committees gracefully end when they should or is there a problem with them outliving their usefulness, and what are you doing about it?

Mr. DEAN. That is sometimes the $64 question, I'm afraid. Advisory committees do not often go gently into that good night, unfortunately. I often say, you know, kind of tongue in cheek, that terminating advisory committees is only somewhat easier than taking away a parking space in Washington. And it is probably true. There are reasons for that.

Because advisory committees serve so many different purposes and sometimes they serve kind of a combination of purposes. Clearly, they provide advice and recommendations on pressing issues and most advisory committees do, in fact, do good things for the government. If they didn't, we simply wouldn't have them.

But they also serve other agendas of agencies and, of course, the Congress. They serve as ways to educate the public, to communicate with the public, in some cases to make a point about a particular issue. And if they are allowed to continue without appropriate oversight or without appropriate termination dates in the case of committees that are mandated by the Congress, then they do tend to travel on under their own inertia.

There are various ways to handle this. We have been very concerned about the groups that Congress creates for some time.

Mr. HORN. The what?

Mr. DEAN. The committees that the Congress mandates that the executive branch must establish where we have no discretion. Not all of these committees, of course, are—are not useless, I am searching for a word. Many of these committees do, in fact, do good things. But in some cases they do not have the appropriate oversight from the congressional committees that authorize them in the first place.

And, therefore, we think it is important, and as suggested in the bill introduced by Senator Thompson, S. 2228, that from time to time the congressional oversight committee should step in and say, "Do we really still need this committee?"

On the discretionary side, the committees that the agencies create, we do have processes in place to terminate those. Each year the agency heads are obligated to review their committees through the annual reporting process and, of course, a large measure of what you have seen on the internet demonstration kind of gets to that.

As far as committees created by the President, GSA does work with the President to review committees created by Executive order or other Presidential directive on a biennial basis, so those are on a slightly different track.

Between the review required by FACA, between the review required by the annual reporting process and OMB circular A 135, I think that the advisory committees do get a fairly good review overall. It doesn't mean to say that some useless committees will not survive. In fact, they do. It is very difficult to get agencies to part with certain—with certain groups.

Mr. HORN. This question is not only to GSA but also the General Accounting Office. Mr. Stevens, you want to comment on that?

Mr. STEVENS. Yes, sir. We did ask agencies that very question, I think, and they put up 26 committees that were congressionally mandated that they felt they would like to get rid of. If it were up to them, they would have. These are all listed on page 38 of the report that we are issuing today, and I notice Senator Thompson's bill would have a sunset. If it was not renewed it would be dissolved.

Mr. HORN. Yes, I can see just by eyeballing this why these committees would be in there. And it could be for a very honorable purpose; that actually they want them to get a broader perspective than the Department has shown up to this point. But the question is, how many years do they have to do that? Very interesting.

OK. Let me move to another joint GSA/GAO question. There are concerns that have been expressed that some Federal agencies interpret the Federal Advisory Committee Act in such a way as to needlessly restrict interaction with the public. Now, what are the specific issues involved in this restrictive interpretation?

Mr. STEVENS. As I understand it, Mr. Chairman, it is an apprehension on the part of some agencies, about 40 percent of the ones we talked to, that since the Federal Advisory Committee Act does place certain requirements on interaction with citizens and groups, they are at risk in meeting with groups of citizens outside the regime of the Federal Advisory Committee Act in such a way that they are subject to litigation. This is an inhibiting factor in their meeting with, you know, with just citizens in group settings if they don't want to go through what they perceive as the burden of establishing a committee and a charter and so forth.

We did hear that allegation a lot, particularly from Energy and the State Department. And they pointed out that there are sometimes emergency situations where you would want to get advice on some late-breaking development and there just isn't time to go through the chartering process.

Mr. HORN. Are those agencies just wrong on some of these, in your judgment?

Mr. STEVENS. I'm not a lawyer, Mr. Chairman. I'm sure a legal case can be made on both sides, and it often is. There are 13 cases in court that the agencies pointed out to us. And I hate to say that one side or another didn't have an argument that should be there.

Mr. HORN. What can be done to correct the situation then? Do we need to amend the law in any way or what?

Mr. STEVENS. I believe GSA is undertaking a clarification through its regulations and you might ask them about it. But my

understanding is that the clarification would be a little more specific about what you can do and can't do. And part of it hinges on whether you get consensus recommendations from the group or whether you are just gathering with the group who speak up as individuals. If there is no intent and no outcome that the group acts as a group, then I think there is not a legal question. I say that as a non-lawyer.

Mr. HORN. General Services have any comments on this?

Mr. WAGNER. I think it is a valid concern that the costs, either real or perceived, that some people have of the Federal Advisory Committee Act does tend to in some cases discourage public participation. We will be taking steps to amend our regulations to make this less of a problem. I do believe it's likely that we will be—we are not quite ready yet, but likely we will be proposing legislative fixes to help this.

A point that I noticed you making in your opening statement, Mr. Chairman, taking a look at the overall, the broader, how we do collaborative decisionmaking is probably worth a very deep look. The Advisory Committee Act, or an advisory committee, is just one way to get participation and more openness. Just having your door more open to interest groups or going out in an outreach kind of way is also important.

So to summarize, we agree that this is a concern and we will be taking steps in the regulatory way to mitigate it to some degree, and are likely to be proposing legislation. Jim, did you have anything you'd want to add?

Mr. DEAN. Just a couple of quick things. Mr. Chairman, I think it's important to note that——

Mr. HORN. You have to speak right into that.

Mr. DEAN. I will try.

Mr. HORN. We are not in the 21st century.

Mr. DEAN. Mr. Chairman, I think it is important to note, and I think we have done so in our testimony, that the use of advisory committees until fairly recently, until really the past 6 or 7 years, has been something that was traditionally done here in Washington. Decisionmaking was held fairly close here among the policymakers.

And that is also changing. The President and the Congress have told Federal managers to get out and talk to people, to get closer to local communities, to work more effectively with State, local, and tribal government. And what that has meant is that what we are seeing in part here is a learning curve.

There are many statutes that we are quite familiar with here in Washington that people in the field have never heard of and quite frankly wish they probably hadn't heard of. And it comes as quite a culture shock to realize that when they use a given tool, that they have to do certain things.

Part of this is going to require some cultural adjustments, because I think it is also important to keep in mind that with that shift, that our Federal officials in the field have been asked to change the way that they do business. And again, this is not something that necessarily comes naturally.

I happened to come across some testimony recently provided by the National Association of Counties, NACO, on S. 1253, the Public

Land Management Improvement Act of 1998, which kind of speaks to several things along these lines. But the one that kind of stood out to me was—they were speaking about the Fish and Wildlife Service in particular, and it reads as follows. It says that the Fish and Wildlife Service seems, "culturally resistant to including public participation from any group not perceived to support the limited agenda of the service."

Of course, I'm not sure I agree with that. But it gets to the point where we have to do more from GSA's point of view to give clear guidance to the end user as to what their options are in dealing with the public, and we also have to take a leadership role in training and supporting those efforts. It's one thing to task folks with doing these things, but it is quite another to prepare them to do it adequately.

Mr. HORN. That is a good point.

Let me ask the two agencies here, has the ceiling on advisory committees that the President established in 1998 kept you from forming an advisory committee? And what would that committee have done? Did you solicit input from other means? How about Energy? Are there advisory committees you want that you have been prevented from having?

Mr. SOLIT. No, there are not. We have an adequate number.

Mr. HORN. How about NIH?

Dr. KIRSCHSTEIN. We have had to form several advisory groups. We've had a new genome center first, and then institute, with a requirement for an advisory group. We had a federally mandated requirement for a few advisory groups. But we have decreased overall 83 committees that we had had, based on the Executive order.

Mr. HORN. In Energy, you noted how important the site-specific advisory boards have been in terms of public trust and confidence in the environmental management program. Whether this trust lasts, however, must have to do in part with how the program treats the recommendations of the site-specific advisory boards.

How many site-specific boards do we have?

Mr. SOLIT. There are 12 site-specific advisory boards now.

Mr. HORN. And how many of their recommendations have been adopted?

Mr. SOLIT. Well, I know that since they've been in existence they have made over I think 300 recommendations. I do not know the exact number of recommendations that have been adopted, but we have adopted a number of them and made forward progress as a result of adopting those recommendations.

There was a survey of our own site-specific advisory boards, the results which we have recently looked at which for the most part indicated that the site-specific advisory boards felt positively about the way the Department of Energy was reviewing and, you know, dealing with the advice and recommendations that they provided.

Mr. HORN. NIH have that type of problem at all on the trust situation?

Dr. KIRSCHSTEIN. We do not have——

Mr. HORN. Because you have in essence sort of site-specific groups, too.

Dr. KIRSCHSTEIN. We have disciplinary and multidisciplinary groups. We do not have, if you mean by site a specific location, we do not have that.

Mr. HORN. By location, you all meet in Washington?

Dr. KIRSCHSTEIN. No, sir.

Mr. HORN. Do you move around?

Dr. KIRSCHSTEIN. They do not move around. But sometimes a peer review group, in order to get a broader view, will meet in conjunction with a scientific meeting that is being held in another part of the country. And our staff, as well as the members of the committee, then will meet with scientists and discuss activities with them. And we have outreach programs whereby our institutes go out and hold town meetings and hold discussion groups with people around the country.

Mr. HORN. It might not be bad to have a few site-specific boards, not on the same site, and not just scientific meetings. But where major research is being done in one area, I would think it would do them all good to go out and see what is happening.

Dr. KIRSCHSTEIN. Well, we do perform site visits, particularly when large grant applications are being considered. Multi-investigators, large instrumentation; we do perform site visits to assure that the funds are being used properly and to assure that there is interaction between the scientists who are proposing to do the work and the reviewers.

Mr. HORN. Well, staff will followup on both sides with any additional questions we have. And if there is anything you would like to say—Mr. Dean, you look like you want to say something there, and we don't shut off freedom here.

Mr. DEAN. I have one closing thought, that's all. I just want to say that we are looking forward to working with the committee on possible amendments next year. And I think it's very important because as part of my job every day, Mr. Chairman, we receive numerous requests through the form of proposed legislation from the Congress to exempt many different kinds of groups from FACA. And I think that it's probably in our interest and in the government's interest to not make policy through exemption.

So I think what we would like to do is to work with you and your staff and our counterparts on the Senate side, to identify some core principles, I think, that we think should apply to advisory committees in general and public involvement in general, and then look at ways to structure the rest of the advisory committee process with the eye toward providing more flexibility and increasing public satisfaction with the process.

Mr. HORN. We'd welcome that. You are dealing with the problems every day and we would welcome that expertise. Same with Mr. Stevens or any of you.

Well, we thank you all for coming. We are going to take a 3-minute break here and then move to panel two. And I believe all of them are in the room: Professor Applegate, Director Davies, and Mr. Beierle and President Alberts of the National Academy of Sciences. We will take a little break.

[Recess.]

[Witnesses sworn.]

Mr. HORN. We apologize for the delay and we will just start with Dr. Applegate. Dr. Applegate, we are glad you came from Indiana, professor of law and chairman of the—is it the Fernald Citizens Advisory Board?

Mr. APPLEGATE. Correct, sir.

Mr. HORN. Please proceed.

STATEMENTS OF JOHN APPLEGATE, PROFESSOR OF LAW, UNIVERSITY OF INDIANA, AND CHAIR, FERNALD CITIZENS ADVISORY BOARD; J. CLARENCE (TERRY) DAVIES, DIRECTOR, CENTER FOR RISK MANAGEMENT, RESOURCES FOR THE FUTURE, ACCOMPANIED BY THOMAS C. BEIERIE, RESEARCH ASSOCIATE; AND BRUCE ALBERTS, PRESIDENT, NATIONAL ACADEMY OF SCIENCES

Mr. APPLEGATE. Good afternoon, Mr. Chairman. I appreciate the invitation very much to testify before you today. Since 1993, I have chaired the Fernald Citizens Advisory Board, originally known as the Fernald Citizens Task Force, which is part of the Department of Energy's national site-specific advisory board, and it advises on the cleanup of the Fernald facility in southwestern Ohio.

In response a bit to some of the questions you were asking the first panel, this committee reports nominally to the Assistant Secretary for Environmental Management, but in practice, to the Ohio field office—director of the Ohio field office.

I also serve on the Environmental Management Advisory Board, which advises the Assistant Secretary for Environmental Management of the Department of Energy on a whole range of issues of national scope. There, too, the committee—advisory committee reports to the Assistant Secretary rather than the Secretary of Energy. And I can also report that in both the site-specific advisory board and the Environmental Management Advisory Board, that there is a close relationship between the supervising Federal officer, the person who is being advised, and the board itself. Often, the board will meet with that individual. And so, the process of giving advice and responding back is often quite informal, though usually memorialized in writing and both transmitted to the responsible official, and then a formal response is invariably received back.

I believe that advisory committees have an important role to play in obtaining and improving public participation in environmental and other public decisions and I urge Congress in its oversight role to encourage that use of advisory committees. In my written testimony, I outline various types of advisory committees, their memberships, and the role they play in agency decisionmaking.

For now, I want to focus on what I call outreach advisory committees, that is, those committees that are designed to bring together a wide spectrum of perspectives and experiences to work with the government to address a particular issue or set of issues.

Over the past several years, as a number of witnesses in the first panel and I believe you yourself, Mr. Chairman, have noted, the Federal Government has pursued a policy of increasing public involvement in its decisionmaking processes. This is a worthwhile effort as it can lead to decisions that are more democratic and responsive, that are better attuned to the needs of affected persons

and groups, that are less likely to be the subject of endless challenges. The problem is how to accomplish it.

The standard method for seeking public input has been review and comment in which a proposal is issued by a department or an agency in a fairly close-to-final form and comments are invited, comments are received, and the agency proceeds to make final decision considering them.

All too often, unfortunately, this kind of process garners public input that is disorganized, poorly informed, polarized, and incomplete. For example, the most recent National Academy of Sciences reports on Risk Assessment, Understanding Risk and Building Consensus, and the Presidential/Congressional Commission on Risk Assessment and Management both strongly urged an iterative, long-term process that involves the public in risk-based decisions at every stage.

Similarly, effective participation in the Department of Energy's environmental remediation decisions requires understanding voluminous technical material, recognizing economic and political constraints, balancing many often conflicting needs, and persistence through an inevitably long, drawn-out process. Review and comment does not work well for such decisions.

What does work though, or what can work, are what I call outreach advisory committees. This use of advisory committees facilitates improved public participation in at least five ways. First, inclusion. Formation of an advisory committee allows the agency to gather the whole spectrum of perspectives and to reach out to people in groups it doesn't ordinarily hear from.

Second, informed. A committee process that can educate participants not only on relevant information but also about opposing views and reasons. That is the basis for an ongoing dialog not only between agencies and the government, but among different groups of the public themselves.

Third, systematic. A committee process can encourage a more coherent approach to the problem as a whole and to the consequences of particular positions. It is a way of addressing the hard questions that we often face in environmental and other kinds of decisions.

Fourth, transparency. A FACA-chartered committee operates in full public view. If nothing else, the statutory and regulatory procedures in the statute require that kind of openness. FACA is, in fact, I believe a good way of keeping public participation accessible to as many people as possible.

Fifth, consensus. One goal of the committee process is to reach consensus or at least to find areas of common ground. Even if agreement cannot be reached on the particular issue that the group is formed for, for example, working together in the advisory committee setting can form the basis for future collaborative decisionmaking.

In participating in advisory committees I have observed no serious conflict between the requirements of FACA and the innovative use of advisory committees to improve public participation. Accordingly, I would urge the committee to adopt, and to encourage the General Services Administration to adopt, a flexible, collegial approach to advisory committees while maintaining compliance with existing laws and regulations.

Thank you, Mr. Chairman. I will be happy to answer any questions that you may have.

Mr. HORN. Well, we thank you Professor Applegate. That is a very helpful statement and well organized.

[The prepared statement of Mr. Applegate follows:]

THE INNOVATIVE USE OF THE FEDERAL ADVISORY COMMITTEE ACT TO IMPROVE PUBLIC PARTICIPATION IN AGENCY DECISIONS

STATEMENT OF JOHN S. APPLEGATE
PROFESSOR OF LAW, INDIANA UNIVERSITY

BEFORE THE
SUBCOMMITTEE ON GOVERNMENT MANAGEMENT
COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT
UNITED STATES HOUSE OF REPRESENTATIVES

July 14, 1998

Good afternoon, Mr. Chairman and Members of the Committee. My name is John S. Applegate. I am a professor of law at the Indiana University School of Law in Bloomington, Indiana, and was previously the James B. Helmer, Jr., Professor of Law at the University of Cincinnati College of Law. The primary focus of my teaching and research is environmental law, in particular the use of risk in environmental decisionmaking, public participation in risk-based decisions, and the regulation of toxic substances and hazardous wastes. I greatly appreciate the invitation to discuss the Federal Advisory Committee Act (FACA)[1] with you today, because for the last five years I have had the opportunity to observe and participate in two very different advisory committees that the Department of Energy (DOE) has established to advise its Environmental Management program. I have served as chair of the Fernald Citizens Advisory Board at the DOE's Fernald facility in southwestern Ohio, and as a member of the Environmental Management

[1] 5 U.S.C. app. 2 §§ 1-16.

Advisory Board (EMAB), which advises the Assistant Secretary for Environmental Management. I have come away from those experiences with a profound respect for the value of public participation in governmental decisionmaking and with enthusiasm for the constructive role of advisory committees as an innovative form of public participation.[2] FACA, as written, allows agencies to use advisory committees to reach out to and engage their stakeholders, and it strikes a good balance between flexibility in the functions and membership of advisory committees and the need for openness and oversight. Unduly rigid or bureaucratic interpretations and the imposition of additional procedural hurdles undermine FACA's flexibility, however, and federal agencies should be discouraged from these practices.

Functions of Advisory Committees

Flexibility is an important aspect of FACA, because advisory committees serve many functions for federal agencies. I would distinguish between three

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[2]My published work in the area of public participation includes Applegate, *Beyond the Usual Suspects: The Use of Citizens Advisory Boards in Environmental Decisionmaking*, 73 INDIANA L.J. 903 (1998); Applegate, *Comparative Risk Assessment and Environmental Priorities Projects: A Forum, Not a Formula*, 25 N. KY. L. REV. 71 (1998); Applegate & Lloyd-O'Connor, *Decision Time for DOE: LWVEF Urges National Dialogue on Nuclear Facilities Cleanup*, THE NATIONAL VOTER, January 1998, p. 14; Applegate & Sarno, *FUTURESITE: An Environmental Remediation Game-Simulation*, 28:1 SIMULATION & GAMING 13 (March 1997); Applegate & Sarno, *Citizens Get Involved in Cleaning Up Fernald*, 11:4 FORUM FOR APPLIED RES. & PUB. POLICY 122 (1996); Applegate & Sarno, *Coping with Complex Facts and Multiple Parties in Public Disputes*, CONSENSUS [Harvard-MIT Public Disputes Program] no.31, p.1 (July 1996); Applegate, *A Beginning and Not an End in Itself: The Proper Role of Risk in Environmental Decisionmaking*, 63 U. CIN. L. REV. 1643 (1995).

general functions: task-oriented, referral, and experience-oriented.

Some advisory committees take on a specific task, addressing a single issue or set of issues. The issue can be as specific as approval of a prescription drug or as broad as a framework for risk assessment, but in all such cases the committee is responding to a perceived need to resolve a particular problem. The Fernald Citizens Advisory Board was originally conceived as such a committee, as it was charged with addressing four specific questions concerning the environmental remediation of DOE's Fernald facility. Logically, most task-oriented committees would disband when they have issued their recommendations, unless they have a residual role in implementation.[3]

Other advisory committees have a specific, continuing function in an agency's decisionmaking. Such committees are often established in legislation. They tend to address a series of different, though related, questions referred to them by the sponsoring agency. The Environmental Protection Agency's Scientific Advisory Panel,[4] for example, comments on EPA's regulations and other rulings relating to pesticides. Referral committees might choose to operate through subdivisions that are more familiar with particular aspects of its mission, as, on

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[3]Negotiated rulemaking committees, for example, are required to disband when they have completed work. 5 U.S.C. § 567. FACA's "default" rule for all advisory committees is a two-year, extendable life. FACA § 14.

[4]7 U.S.C. § 136w(d).

a large scale, the National Academy of Sciences does.[5] Like a task-oriented committee, referral committees may require a substantial professional staff, since formal, detailed recommendations based on independent research and investigation may be expected from them.

Agencies and their senior administrators often seek advice on policies or strategies for addressing the range of ongoing and emerging issues that they confront. This kind of advice can improve the quality and efficiency of agency decisions enormously by securing insights from individuals with significant experience in and knowledge of the areas of the agency's concern. The advice from experience-oriented committees tends to be more general and often fairly informal. The other advisory board on which I serve, the Environmental Management Advisory Board, serves this and other functions. With a membership that includes nuclear engineers, federal and state environmental regulators, environmental activists, management experts, and even a couple of environmental lawyers, EMAB brings a variety of relevant experience to the table. It allows the Assistant Secretary to reach beyond the Beltway and gives him a sounding board for the Department's proposals and activities. Like a referral committee, an experience-oriented committee might usefully continue in existence indefinitely. Indeed, as an outside repository of institutional memory, it can provide a source of continuity for incoming appointees to senior positions.

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[5]The National Academy of Sciences, of course, has a special status under FACA. *See* FACA § 15.

Undoubtedly, additional functions exist and the various functions could be characterized in other ways. The important point, however, is that advisory committees do different things for their sponsoring agencies. The multiplicity of committee functions means that FACA's existing flexibility in the purposes, duration, membership, and work product of advisory committees should be retained and supported. In exercising their supervisory responsibilities, Congress, the President,[6] and sponsoring agencies should refrain from imposing additional requirements on the establishment and operation of advisory committees.[7]

Innovations in Public Participation

Flexibility is also important because it allows advisory committees to be used in innovative ways. Through the use of negotiating or deliberative bodies, advisory committees can play an important role in supplementing the traditional review-and-comment procedures for public participation. FACA current provides the flexibility to implement new forms of public participation while at the same time assuring that advisory committees meet minimum standards of necessity,

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[6]Executive oversight is shared by the General Services Administration and the Office of Management and Budget. Exec. Order No. 12838, 58 Fed. Reg. 8207 (1993). GSA's FACA regulations are codified at 41 C.F.R. subpt. 101-6.10; OMB's guidance can be found in Circular A-135. GSA's oversight was critically reviewed in General Accounting Office, Federal Advisory Committee Act: General Services Administration's Oversight of Advisory Committees (June 1998).

[7]For example, FACA requires that new advisory committees be "essential" and "determined as a matter of formal record . . . to be in the public interest," FACA §§ 2(b)(2), 9(a)(2), but Executive Order No. 12838 § 3 requires "compelling considerations" that are to be approved only "sparingly."

openness, balance, and accountability.[8]

The forms of public participation in agency action have moved through four phases.[9] The earliest and most basic, review-and-comment, allows for broad public input. A proposed action or decision is announced, written comments are invited and received, and the agency issues a final decision after considering the comments. Anyone can comment on any aspect of the agency's proposal.[10] While the process is certainly fair, it is not very "transparent," that is, it is not necessarily clear how the agency uses the comments it receives. In some cases, the process has been justly criticized as "decide-announce-defend," suggesting that the request for comments was treated by the agency as a mere formality.

To remedy the decide-announce-defend problem, Congress and the courts imposed additional procedures to ensure that public comments receive serious consideration. Enhanced review-and-comment procedures include, for example, public hearings, formal records of the basis of the agency's decision, and written responses to comments. The goal, as one court put it, is to assure a "genuine

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[8]I strongly commend to the Committee's attention two excellent, up-to-date reviews of FACA, Croley & Funk, *The Federal Advisory Committee Act and Good Government*, 14 YALE J. ON REGULATION 451 (1997); Croley, *Practical Guidance on the Applicability of the Federal Advisory Committee Act*, 10 ADMIN. L.J. OF AMERICAN U. 111 (1996).

[9]These are described in greater detail in Applegate, *Beyond the Usual Suspects*, *supra*, at 906-26.

[10]The most familiar form of this is notice-and-comment rulemaking, 5 U.S.C. § 553. A similar process is often followed with adjudicatory decisions.

dialogue" between the agency and its stakeholders.[11]

A side-effect of additional procedures was to require even more time and effort to go into an already lengthy regulatory process. To address this perceived inefficiency, agencies began to turn to regulatory negotiation to reach some of their decisions, a development that Congress supported.[12] Proponents of regulatory negotiation believe that it encourages cooperation, information sharing, and the use of practical experience. They foresaw greater speed in the regulatory process, better regulations, and wider acceptance of regulatory decisions. While the Negotiated Rulemaking Act is expressly subject to the requirements of FACA,[13] regulatory negotiation has always been something of an insiders' procedure, as it requires a regular presence (usually in Washington, D.C.) and a fairly high level of expertise to participate effectively. Moreover, it can lend itself to deal-making instead of the kind of transparent administrative process that FACA envisions.

A more recent innovation is the citizens advisory board, a committee selected by an agency from among interested and affected persons to study an issue, to deliberate over potential courses of action, and to provide consensus advice to the agency. Ideally, such boards are created and function in a

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[11]Natural Resources Defense Council v. U.S. Nuclear Regulatory Comm'n, 547 F.2d 633, 653 (D.C. Cir. 1976), *rev'd sub nom.* Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, 435 U.S. 519 (1978).

[12]Negotiated Rulemaking Act, 5 U.S.C. §§ 561-570. *See also* Alternative Dispute Resolution Act, 5 U.S.C. §§ 571-583.

[13]5 U.S.C. §§ 562(7), 565(a)(1). For a discussion of the relationship between negotiated rulemaking and FACA, *see* Croley & Funk, *supra*, at 454; Croley, *supra*, at 121-23.

completely open process, are well informed, engage in dialogue among interested parties and between them and the agency, and attempt to reach common ground. Citizens advisory boards have a fairly short history, but they have been used in the siting of hazardous waste facilities in Massachusetts, local emergency planning committees established by federal right-to-know laws,[14] waste disposal planning in New Jersey, the Chemical Manufacturers Association Citizens Advisory Panel program, and river development in the Pacific Northwest. Superfund reform bills include citizens advisory boards to address future land use.

The most ambitious use of citizens advisory boards has been in the environmental remediation of federal facilities. The use of such boards was originally suggested by the Office of Technology Assessment.[15] A subsequent EPA advisory committee, the Federal Facilities Environmental Restoration Dialogue Committee (FFERDC), which was comprised of representatives of EPA, the major federal facility agencies, state regulators, tribal governments, local citizen groups, national environmental groups, organized labor, and others, recommended the establishment of "site-specific advisory boards" (SSABs).[16] FFERDC defined

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[14]42 U.S.C. § 1101(c).

[15]OFFICE OF TECHNOLOGY ASSESSMENT, CONGRESS OF THE UNITED STATES, COMPLEX CLEANUP: THE ENVIRONMENTAL LEGACY OF NUCLEAR WEAPONS PRODUCTION 139-41 (1991).

[16]FEDERAL FACILITIES ENVIRONMENTAL RESTORATION DIALOGUE COMMITTEE FINAL REPORT, CONSENSUS PRINCIPLES AND RECOMMENDATIONS FOR IMPROVING FEDERAL FACILITIES CLEANUP (April 1996). While DOE has used the term "SSAB," the Department of Defense has called its committees "restoration advisory boards" or RABs.

SSABs as independent public bodies established to provide policy and technical advice to the regulated and regulating agencies with respect to clean-up decisions. It envisioned relatively small committees, reflecting the "full diversity" of relevant views, including readily identifiable affected parties, unorganized "individual residents that live in the communities or regions in which the site is located," and governmental decisionmakers. SSABs were to identify issues of concern and to attempt to reach consensus on them.

The SSAB idea had its first major tryout at the DOE facility at Fernald, Ohio. Established in 1951 as the Feed Materials Production Center (it is now called the Fernald Environmental Management Project), the facility produced uranium metal products for nuclear weapons until 1989. It is located seventeen miles northwest of downtown Cincinnati in an area dominated by agricultural and low-density residential development. The DOE property is about a mile square, so there is only a minimal buffer between the production facilities and neighboring properties. A variety of chemical and metallurgical processes were used at Fernald, and they discharged, among other things, heavy metals, air pollutants, radon, and approximately one million pounds of uranium in liquids and as dust. Elevated concentrations of uranium can be found in the soils, surface water, and groundwater on the Fernald site and beyond its fenceline.

Fernald was one of the first sites at which the extent of the government's environmental mismanagement became known. DOE was sued by local residents and paid out substantial damages for the off-site contamination. It was also sued

by the State of Ohio, and it ultimately paid fines to the state and agreed to state oversight of its waste disposal activities. A strong grassroots citizens group formed to press for remediation of the site. Agreements negotiated with U.S. EPA and Ohio EPA identified the principal decisions about the environmental remediation of the facility that needed to be made over a specified period of several years. DOE managers at Fernald recognized that many of these decisions would have a profound impact on the local populace, and that their participation was essential to reaching sound and broadly acceptable decisions that could be implemented without further litigation. Therefore, upon release of the FFERDC interim report, DOE decided to establish an SSAB at Fernald.

The members of the Fernald SSAB were selected and a charter drafted by an independent convener. The committee was named the Fernald Citizens Task Force, later changed to Fernald Citizens Advisory Board to reflect its continuing role and its relationship to citizens advisory boards at other DOE sites. The charter identified four specific but far-reaching issues for the Task Force to address: the appropriate future use of the site, residual risk (clean-up) levels, waste disposition (on-site and/or off-site), and clean-up priorities. Together these amount to a blueprint for the entire remediation project. The seventeen original members of the Task Force included members of local and national environmental groups, neighbors of the site, township and county government officials, representatives of the major trade union councils at the site, local businesspeople, health professionals, and area educators. Some were chosen primarily for their

representation of important constituencies (environmental activists, labor, local government), whereas others were chosen for their experience or expertise on relevant issues (engineers, health professionals). A connection to the site or area was the common denominator. The senior site officials of DOE, U.S. EPA, and Ohio EPA were non-voting members.

The Task Force began its work in August 1993, and it issued an interim report in November 1994 and a full report in July 1995.[17] On all of the issues, the Task Force sought a principled middle ground that ensured protection of human health while recognizing technological and fiscal constraints. Only the most intensive future uses of the site (residential and agricultural) were prohibited; the designated residual risk levels protect the aquifer from further contamination but minimize surface disruption and waste generation; the aquifer is to be cleaned; the most dangerous waste will be transported off-site, while high-volume/low-risk material will be deposited in an engineered on-site facility; and an accelerated clean-up plan will reduce overhead costs quickly.[18] DOE estimates that the recommendations will save taxpayers more than $2 billion over the lifetime of the project.

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[17]FERNALD CITIZENS TASK FORCE, RECOMMENDATIONS ON REMEDIATION LEVELS, WASTE DISPOSITION, PRIORITIES, AND FUTURE USE (1995). Subsequent recommendations of the Task Force can be found at <www.fernald.gov/stakeholders/CitizensAdvisoryBoard/fcab_rec.htm>.

[18]All of the recommendations were unanimous except waste disposition, as to which one member dissented from an on-site disposal facility. Another member, while not dissenting from the recommendation, believed that the residual risk estimates were unduly conservative.

SSABs at other DOE sites have also had a strong positive influence. Citizens advisory boards offer the opportunity, in the right setting, to obtain a broad range of views (including those who are not the "usual suspects"), to develop essential information in a systematic way, to have a genuine dialogue among interested parties, and, most important, to build the kind of trust and confidence that is necessary for agency decisions to enjoy broad public acceptance and support.

New Functions for Advisory Committees

The innovations in public participation that are represented by regulatory negotiation and citizens advisory boards parallel changes in the understanding of agencies' role in our democracy. Under the traditional model of regulatory action, an agency neutrally resolves issues by applying its substantive expertise to the policies set out by Congress. This view of the world was replaced by interest group pluralism, in which the agency is viewed as a broker of the many relevant interests and perspectives on problems within its jurisdiction, though it has a particular obligation to seek out underrepresented interests and to further the general "public interest" in its decisions.[19] Interest group pluralism remains the dominant model of administrative action, but it has recently attracted a challenge from communitarianism (or civic republicanism), which advocates administrative

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[19] *See* Stewart, *The Reformation of American Administrative Law*, 88 HARV. L. REV. 1667 (1975).

action that is guided by the agency's informed vision of the common good, following deliberation with interested and affected parties. Federal advisory committees have reflected these changes through changes in committee membership and function: expert advisory committees have been supplemented in recent years by negotiation and outreach committees.

The traditional justification for advisory committees was the acquisition of a level of knowledge and perspective that are unavailable within the agency. To the extent that agencies are applying technical expertise to a particular problem, it is extremely valuable to be able to gather together a group of experts for help. Secrecy and the undue influence of particular points of view (especially those of regulated entities) are potential dangers, but the principal goal of convening such committees is to reach technically better decisions.

Under the interest representation and deliberative models, advisory committees can serve an important outreach function by including in agency decisionmaking an opportunity for dialogue rather than simply comment. A negotiated rulemaking committee is the quintessential advisory committee under the interest representation model. From this point of view, the requirements in FACA and the Negotiated Rulemaking Act[20] of balance and inclusion of significantly affected parties reinforce the goal of striking an appropriate bargain among the relevant interests.

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[20] *See* FACA § 5(b)(2); 5 U.S.C. §§ 563(b), 565(b).

An outreach committee, on the other hand, ought to be transformative, that is, it should charge participants' minds or at least open new perspectives. Since the point is not negotiation but deliberation over the common good, the criteria for membership should be a broadly defined interest in or experience with the issue. Consistent with the deliberative approach described above, the goal is to establish communication and to build working relationships, which can then be put to use in making particular decisions. Both FFERDC and the SSABs were outreach committees.

While FFERDC and the SSABs were also task-oriented committees, in that they provided recommendations in response to specific questions, an outreach approach can be taken with other advisory committee functions, as well. DOE's Assistant Secretary for Environmental Management several years ago established an Environmental Management Advisory Board (EMAB) to provide ongoing advice on important issues facing the DOE clean-up program.[21] He sought advice on specific proposed actions, on broader policy issues, or on issues that the agency *should* be addressing. Its function (as opposed to purpose) is thus an experience-oriented advisory committee. Its membership includes individuals with outstanding experience and expertise in nuclear, environmental, and regulatory issues. Because EM is also trying to operate in a more efficient, business-like manner, it includes experts in key areas of business organization. But in addition

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[21]The board was originally known as the Environmental Management Advisory Committee.

to these, several members of the board are there because of their advocacy role or other substantial involvement in clean-up activities at the local or national level. The board has increased the outreach function still further by including numerous stakeholders in appropriate subcommittees. This arrangement does not, of course, eliminate all conflict over the many extremely controversial issues that DOE must address, but it gives the Department an opportunity to understand and respond to concerns about its initiatives. Conversely, it gives members of the public better insight into the thinking and concerns of the DOE.

I have made a number of distinctions among advisory committee functions, forms of public participation, and advisory committee purposes. They are summarized below:

Advisory Committee Functions	Forms of Public Participation	Advisory Committee Purpose
• Task-Oriented	• Review-and-Comment Enhanced Review-and-Comment	• Technical Expertise
• Referral	• Regulatory Negotiation	• Negotiation with Affected Interests
• Experience-Oriented	• Citizens Advisory Boards	• Outreach and Deliberation

It is important to remember that none of the distinctions is, or should be, absolute or exclusive. Many advisory committees perform multiple functions, all of the forms of public participation productively coexist, and different advisory committees have different purposes and memberships. This, too, is an argument

for flexibility. Agencies and advisory committees should not be tied to any single function, format, or purpose, because no one of these will be most useful for a given decision. For example, approval of a new drug probably requires more medical expertise than community involvement, and negotiation is largely irrelevant. Siting a landfill, on the other hand, requires more community involvement than engineering expertise, and the terms on which the landfill is accepted may be a matter for negotiation. The remediation of DOE's sites requires a broad-based deliberative effort to address the many difficult technical and social issues that nuclear waste implicates.[22] FACA has an important role to play in facilitating such outreach efforts while at the same time ensuring an open, balanced decisionmaking process.

Public Participation and the Federal Advisory Committee Act

To the extent that advisory committees are used for new purposes, such as negotiation and outreach, it is more important than ever that they follow basic democratic (or "good government," to use Croley and Funk's term) principles for agency decisionmaking. Based on my participation in two FACA-chartered advisory committees of the outreach variety, I believe that FACA as currently written permits innovative uses of advisory committees to improve public participation. Unfortunately, there is an inconsistency between the present

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[22] *See* Applegate & Lloyd-O'Connor, *supra*.

Administration's overall aggressive support for public participation and its aggressive efforts to rein in advisory committees,[23] and this has been a source of confusion for the establishment and operation of committees. I will conclude with a number of specific aspects of the current statutory regime that need to be retained and not undermined by administrative interpretation, policy, or practice.

Advisory Role. FACA could not be clearer that an advisory committee must not replace the ultimate decisionmaking authority of the agency.[24] This can be a source of confusion, however, in consensus-based outreach committees. Public members often feel that the committee's voice should be decisive and are disappointed that it is only "advisory." Much as a private citizen may wish it, and tempting as it sometimes may be to an agency, the public officials to whom governmental power has been delegated cannot avoid difficult decisions by giving them to someone else.[25] This is a fundamental requirement of accountability in democratic governments. FACA, as I said, is clear on this point, and sponsoring agencies need to clarify with prospective committee members the role that the committee will play in the agency's decisions. Nothing in FACA prevents an agency from demonstrating -- by making a detailed written response, for example

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[23]Croley, *supra*, at 112-15.

[24]FACA §§ 2(b)(6), 9(b). The Negotiated Rulemaking Act makes it clear that negotiating committees produce a *proposed* rule which is then subject to comment and final agency action. 5 U.S.C. § 566(f).

[25]It is clearly inappropriate for an agency to delegate its final decisionmaking authority to a non-governmental advisory group. *See* USA Group Loan Services v. Riley, 82 F.3d 708, 714 (7th Cir. 1991).

-- that the committee's views were given thoughtful consideration and were adopted to the extent consistent with the agency's view of the law and good judgment. In this way, the advisory committee can forge a "synergistic relationship"[26] with the agency that leads to well founded and widely accepted decisions.

A corollary to the advisory role is the understanding that the committee does not replace other forms and forums for public participation. An advisory committee must not squeeze out the right to address the agency directly.[27]

Balance and Inclusion. Outreach advisory committees should not only be balanced among views, as FACA requires,[28] but they should also reflect the full range of views. Advisory committees provide a unique opportunity to engage not only the persons who normally participate in the agency's decisionmaking, but also persons for whom participation is difficult or who are simply not affiliated with any organized group. Neither inclusion nor balance is really capable of objective measurement, so FACA is properly general on the subject, though it could be more explicit in the requirement of inclusiveness. To further encourage balance and inclusion, agencies can be reminded that biased outreach is useless, if not counterproductive. In this as in all areas of public participation, the success

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[26]Wald, *The Role of the Judiciary in Environmental Protection*, 19 B.C. ENVTL. AFF. L. REV. 519, 534 (1992). Judge Wald was, of course, referring to the relationship of courts with agencies, but the goal is the same.

[27]FACA also guarantees the right to address the committee directly. FACA § 10(a)(3).

[28]FACA § 5(b)(2).

advisory committees, frequently heard complaints to the contrary notwithstanding. FACA demands publicly stated reasons for the creation and continued existence of advisory committees, it provides for agency support and supervision, and it requires a number of procedures to assure transparency -- and little else. This is as it should be; no additional formalities are necessary. In my experience, providing notice, keeping records, consulting with designated federal officials, and holding open meetings has not interfered in the least with a robust dialogue between the agency and the public.

Flexibility and Justification. FACA insists that the creation and continued existence of advisory committees be justified in terms of the agency's mission and needs, but it is silent on the substance of those missions and needs.[31] Like the brevity on procedures, this is a better course than prescribing precise conditions under which advisory committees may be established. There are too many combinations of functions and purposes, and too many opportunities for innovation, to make such prescriptions at all useful, or even workable. The current justification requirement is structured to support flexibility. It also improves advisory committee operations by ensuring that procedures, purposes, and roles are understood in advance by all participants. Nominally, GSA's justification and renewal regulations are in accord with this approach, though some departments find them quite burdensome. In "sparingly" granting its

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[31]FACA §§ 2(b)(2), 5(a), 7(b), 9(a)(2), 14.

of the enterprise inevitably depends on the good faith and motivation of the responsible agency officials. (This is also the case with federal officer supervision of advisory committees.[29]) Clear Congressional and Presidential signals that outreach is encouraged (as the Negotiated Rulemaking Act did for regulatory negotiation) will be more effective than procedural requirements in achieving these qualities.

Conflicts of interest are a related concern. FACA discourages them and requires disclosure as a remedy.[30] Committee members should not have a direct financial interest in the outcome of the board's deliberations, nor should they receive direct financial benefit from the activities of the committee. On the other hand, the need to include affected persons will sometimes conflict with the desire for objectivity. On some issues, the directly affected individuals or groups are those whose views are central to achieving a just resolution. In such situations, it is important to err on the side of inclusion, but with full disclosure, as FACA requires.

Procedure. The creation of an advisory committee is pointless if it is simply another forum for comments. The great potential of an outreach committee is to develop a back-and-forth exchange between agency officials and the interested public, and among different segments of the public, with the goal of achieving consensus positions. FACA is very terse in its procedural requirements for

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[29]FACA §§ 7(c), 8(b)(1), 10(e)-(f).

[30]FACA § 5(b)(3).

approval of committee charters, GSA and OMB should interpret FACA flexibly to permit expanded public participation and the innovative use of advisory committees.

Transparency. When the government seeks advice from an advisory committee, both participants and observers should clearly understand the process by which the committee was selected, its purpose, the role that it plays in any subsequent agency action, and the committee's own operating procedures. Meetings should be open to the public, and anyone should be given an opportunity to address the committee (and the agency) in an orderly manner. If there is a major theme in FACA, it is that advisory committee formation, input, operations, and products are to be open to public scrutiny.[32] For outreach purposes, transparency is absolutely essential. While secrecy may have a role in advice that involves national security or confidential business information, and perhaps even in regulatory negotiations (though I resist that conclusion), it has no place in public participation. Open records, open meetings, and the presence of federal officials encourage the broad-based dialogue that advisory committees make possible.

Educative. A common frustration of agency officials is that their critics are poorly informed of the factual context and the political and economic constraints under which agencies operate. Thomas Jefferson said:

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[32]FACA §§ 2(b)(5), 10, 11, 13.

> I know of no safe depository of the ultimate powers of the society but the people themselves; and if we think them not enlightened enough to exercise their control with a wholesome discretion, the remedy is not to take it from them, but to inform their discretion.

Neither review-and-comment nor negotiation has an informative purpose, but committees and boards can perform that function. The agency needs to provide access not only to relevant information, but also to the educational tools to make the information usable by persons without extensive experience in the area. In this area, perhaps more than others I have discussed, advisory committees have a constructive role to play in bringing together government officials and citizens in a collaborative search for the public good. I urge the Committee to exercise its oversight to encourage federal agencies to use FACA to encourage innovation in public participation.

Mr. HORN. J. Clarence (Terry) Davies is director of the Center for Risk Management at Resources for the Future, our neighbor on Massachusetts Avenue. You're still in that Brookings annex, are you?

Mr. DAVIES. Not any longer. We have moved to P Street.

Mr. HORN. To P Street. OK. The budget must have increased or something.

Mr. DAVIES. We bought a building.

Mr. HORN. And you are accompanied by Thomas C. Beierle, a research associate. Glad to hear you.

Mr. DAVIES. Thank you, Mr. Chairman. I am a political scientist by training. I have had 33 years of experience in environmental policy, including a couple of years as Assistant Administrator for Policy in EPA. So I have seen various aspects of advisory committees.

I need to say that my views are my own personal views and not Resources for the Future's. RFF is an independent research organization that does not take policy positions, and so what you are hearing are my personal views and not those of the organization.

We are currently doing major research on the subject of public participation, and the work we are doing is described in the written testimony. We have only recently started this work. We have two papers which are not quite in final form but I think are potentially useful to the committee, and with your permission, Mr. Chairman, we would like to submit those for the record.

Mr. HORN. Without objection, they will be included in the record at this point.

[The information referred to follows:]

The Federal Advisory Committee Act and Public Participation in Environmental Policy

July 13, 1998

DRAFT

Rebecca Jane Long and Thomas C. Beierle

Center for Risk Management
Resources for the Future
1616 P Street NW
Washington, DC 20036

Introduction

While virtually all federal environmental statutes allow for some form of public participation, a number of recent high-profile analyses have noted that the mechanisms available for involving the public are inadequate. The National Research Council's 1996 report, *Understanding Risk*, recommends that agencies make a greater effort to increase public involvement throughout the policy development process. The Presidential/Congressional Commission on Risk Assessment and Risk Management came to similar conclusions in their 1997 report, *Framework for Environmental Health Risk Management.* Former EPA Administrator William D. Ruckelshaus recently warned that a lack of participation has contributed to the public's lack of trust in the federal government, seriously undermining our ability to manage environmental risks effectively (Ruckelshaus, 1996). Some companies, particularly those in the chemical industry, have also recognized the need to improve their relationships with local communities by increasing participation.

One important mechanism for public involvement in government decision-making is the advisory committee. Advisory committees, with their fixed membership, repeated meetings, and deliberative structure, allow for in-depth discussion throughout the policy-making process among people with a variety of viewpoints. They provide an alternative to the confrontational "decide, announce, defend" approach, a common criticism of public hearings—the most common forum for face-to-face citizen involvement in agency decision-making. In environmental policy alone, advisory committees have recently been charged with making recommendations on subjects as diverse as greenhouse gas emissions, fusion energy, environmental justice, and the Exxon-Valdez oil spill. Yet, federal advisory committees are not a recent phenomenon. Their history can be traced back at least to 1794 when George Washington convened a committee in response to the Whiskey Rebellion (Smith 1997, 1).

A discussion of advisory committees at the federal level is inseparable from a discussion of the law, passed in 1972, which regulates them: the Federal Advisory Committee Act (FACA; Public Law No. 92-463).[1] This paper examines how the Federal Advisory Committee Act, by influencing the use and function of federal advisory committees, has affected public participation in national environmental decision making. FACA is "one of the four pillars of open-government laws," along with the Government in the Sunshine Act, the Freedom of Information Act, and the Administrative Procedures Act (Nuszkiewicz, 1992, 966). Although the law has a powerful influence on how public participation occurs at the federal level, FACA was not designed to increase participation in government *per se*, but to manage the process in a way that limited the influence of special interests. Its requirements for a formal charter, balanced membership, and open meetings were born as much out of fear of too much influence from certain "publics" as too little responsiveness to the public at large. The law has therefore had profound implications for who participates, when they participate, how they participate, and what influence participation has on decision-making. As numerous lawsuits, agency decisions, and recent efforts by the Clinton administration to limit spending on advisory committees has shown, the Act has also been a powerful tool for determining how participatory government policy-making will be.

Section 1 provides a general background on advisory committees and FACA. It uses examples from the Environmental Protection Agency to illustrate the varied use of advisory committees in environmental decision-making.

Section 2 examines how the provisions of FACA have affected public participation in federal decision-making. It looks at two possible "chilling effects" that FACA may have on participation. The first effect concerns the barriers that FACA's procedural requirements pose for "bottom-up" efforts by citizens to participate in government decision-making. The second effect concerns the influence of "FACA-phobia"—a fear born of FACA-related litigation and fueled by the act's ambiguity—on agency's decisions to engage the public in decision-making.

[1] Throughout the rest of this paper, it is assumed that "federal advisory committee" refers to FACA-chartered federal advisory committees. There are some examples of non-FACA federal advisory committees, and these exceptions are noted in the text.

Section 3 examines how FACA has been used as a tool for limiting the use of federal advisory committees. Concurrent—and many have claimed contradictory—Clinton administration policies have encouraged agencies to increase public participation while at the same time setting limits on the cost and number of federal advisory committees. This section examines how this dynamic has played out in terms of overall participation through committees in environmental policy making. The section charts trends over the last decade in the number, membership and cost of federal advisory committees throughout the federal government and, more specifically, at the Environmental Protection Agency (EPA), the Department of Energy (DOE) and the Department of the Interior (DOI). It finds that, while the number of committees has fallen government-wide, membership and costs have risen, suggesting no overall attenuation of advisory committee participation.

Section 4 examines how the trio of forces described in Sections 2 and 3—a "bottom up" chilling effect, "FACA-phobia," and administrative limits on committees—have affected one type of federal advisory committee: the site- and region-specific committees common to five agencies with environmental responsibilities. This type of advisory committee is designed to engage local stakeholders in local environmental decision-making. The examination finds that the effects of FACA vary among agencies, but at least in some, can seriously circumscribe the potential benefits of participation.

Section 5 takes a different look at FACA advisory committees by asking how well existing committees perform against a set of evaluative criteria. It proposes an evaluative framework which federal agencies may use as a way to assess the success of public participation efforts in general, and federal advisory committees in particular.

Section 6 concludes the paper with a discussion of how the many aspects of FACA determine what types of committees are likely to be formed and whether they will be successful. It describes a preliminary list of "factors favorable" to successful federal advisory committees and how these factors determine what type of participation advisory committees can foster. The

section closes with ideas for further research.

Section 1. Background

Established in 1972, as one of the "openness in government" laws, FACA was designed to counter the undue influence of special interests by balancing the membership of federal advisory committees and ensuring that committee meetings and minutes were open to the public. It was also designed explicitly to control the number and cost of FACAs. At the time of its passage, Congress believed that there were too many "inactive, meaningless, obsolete and redundant committees" but that many committees were "so powerful that they, in effect, constituted a 'fifth arm of the government' on top of the legislative, executive, judicial and regulatory or administrative branches" (Cardozo 1981, 10).[2] FACA was designed to rectify this situation. Prior to the act's passage, there were approximately 1,500 to 3,000 federal advisory committees. Because there were no registration requirements, however, it is impossible to know the exact number (Cardozo 1981, 5). In FY 1997, this number had dropped to 963, with committees consisting of 36,586 members and serving 57 federal entities (GSA, 1998).

The central tenets of FACA require that federal advisory committees:

- Establish a written charter that explains the mission of the committee;
- Give timely notice of committee meetings in the *Federal Register*;
- Have fair and balanced membership in the committee;
- Open committee meetings to the public, whenever possible[3];
- Have the sponsoring agency prepare minutes of committee meetings;
- Provide public access to the information used by the committee;
- Grant to the federal government the authority to convene and adjourn meetings; and
- Terminate within two years unless the committee charter is renewed or otherwise provided for by statute.

[2]Quoting hearings on S.1637, S.1964, and S. 2064 before the Subcommittee on Intergovernmental Relations of the Senate Committee on Government Operations, 92d Congress, 1st Sess., pt. 1, at 12 (1971).

[3] Meetings may be closed if they involve "discussions of classified information; reviews of proprietary data submitted in support of Federal grant applications; and deliberations involving consideration of information

Although there is great variety among federal advisory committees, there are some common elements, which suggest ample opportunity for effective participation. Most advisory committees are relatively small, and most committee meetings dealing with environmental issues are open to the public. Regular meetings, fixed membership, and a discussion-based format provide opportunities for face-to-face discussion and deliberation between members over a relatively long period of time.[4] Members are often chosen to represent defined interests or interest groups, and membership is "balanced" among a variety of interests (although we will see in Section 2 that the issue of balance is a contentious one). The mere existence of a FACA-chartered advisory committee suggests that participants and an agency (or Congress, in the case of statutorily required committees) were committed enough to an issue to go through the chartering process and devote time and funds to its existence.

But federal advisory committees do not comport with a model of popular grass roots participation: they are decidedly "top down" organizations. Committees are established under the authority of federal laws, by an executive agency, or by the president.[5] All meetings must take place in the presence of a government official (the required "designated federal official"). Procedural requirements—such as publishing meeting notices in the *Federal Register*, coordinating with an agency on the publication of minutes, and even meeting in government buildings—ensure a close tie with agencies. The dissolution of committees is also at the discretion of agencies.

Federal advisory committees fall into three general categories: expert, policy-level, and site- or region-specific. Although the boundaries between the categories are not always well defined, these distinctions can be drawn on the basis of committees' missions and membership, and are useful for categorizing committees in the discussions which follow. The use of advisory committees at the Environmental Protection Agency over the past few years illustrates these

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governed by the Privacy Act" (GSA 1995, 3).

[4] Committees generally exist for at least two years, at which time they are either terminated or renewed. Some committees have existed for quite some time. EPA's Science Advisory Board, for example, is in its 20th year.

[5] Advisory committees are established under FACA in one of four ways: 1) they are required by statute, 2) authorized by statute, 3) established under general agency authority, or 4) established under presidential authority (generally by Executive Order). Those required by law or established by the president are considered "non-

different types of advisory committees. Table 1 lists some of the expert, policy-level, and site-specific committees in use by EPA from 1993 to 1996.

Table 1: Selected Advisory Committees at EPA

Expert Advisory Committees	
Science Advisory Board	A "technical peer review panel" that "provides such scientific advice as may be requested by the [EPA] Administrator" or relevant congressional committees. [a]
Environmental Financial Advisory Board	A board composed of "independent experts" to "provide authoritative analysis and advice to the EPA Administrator on finance issues to assist the Agency in carrying out its environmental mandates." [b]
Policy-Level Advisory Committees	
Study Commission	
Risk Assessment and Risk Management Commission	A commissioned convened to "make a full investigation of the policy implications and appropriate uses of risk assessment and risk management in regulatory programs under various Federal laws." [c]
Standing Advisory Committees	
Clean Air Act Advisory Committee	A committee formed to provide EPA with advice on a variety of national air quality issues related to the implementation of the Clean Air Act Amendments of 1990.
Policy Dialogue Committee	
Common Sense Initiative Council	A council established to "bring together federal, state, and local government representatives, environmental and environmental justice leaders, industry representatives, and other stakeholders to examine the full range of environmental requirements affecting industry" in six sectors. [d]
Regulatory Negotiation	
Small Nonroad Engine Negotiated Rulemaking Advisory Committee	A committee formed to negotiate rules on controlling emissions from small nonroad engines (less than 25 horsepower) which had been identified by EPA as significant contributors of ozone precursors and carbon monoxide in National Ambient Air Quality Standard non-attainment areas.
Site-Specific Advisory Committees	
Community Advisory Groups	Local committees "made up of representatives of diverse community interests and provide a public forum for community members to present and discuss their needs and concerns about the decision-making process at [Superfund] sites affecting them." Although not chartered under FACA, these committees comply with the "spirit" of FACA. [e]

a EPA—Science Advisory Board. 1998. http://www.epa.gov/science1/about.htm
b EPA—Environmental Financial Advisory Board. 1998. http://www.epa.gov/efinpage/efabmem.html.
c EPA. 1998. Mandate of the Commission on Risk Assessment and Risk Management. http://www.riskworld.com/Nreports/1996/risk_rpt/html/nr6aa028.html.
d Common Sense Initiative Council Federal Advisory Committee. *Federal Register* (November 3, 1994).
e EPA. *Community Advisory Groups: Partners in Decisions at Hazardous Waste Sites.* EPA 540-R-96-043.

discretionary" while those authorized by law or created under agency authority are considered "discretionary."

Expert committees are designed to provide outside technical advice on issues relevant to the function of agencies. As a source of inexpensive outside expertise, they "inject a much-needed strain of competence and critical intelligence into a regulatory system that otherwise seems all too vulnerable to the demands of politics" (Jasanoff 1990, 1). At EPA, the primary expert committee is the 20-year-old Science Advisory Board, which acts as the agency's technical peer review panel. Members of expert advisory committees are typically selected for their expertise in particular disciplines, not all of them scientific. The members of EPA's Environmental Financial Advisory Board, for example, are "independent experts drawn from all levels of government...the finance, banking, and legal communities; business and industry; and national organizations." (EFAB, 1998). Expert committees are not discussed further in this paper, because there are few features of them which would be considered "public participation" in the general definition of the phrase.[6]

Policy-level committees advise on the more value-laden, social dimensions of policy. These include committees established to conduct regulatory negotiations and policy dialogues, as well as study commissions and standing advisory committees. In general, policy-level committees provide substantive input from the point of view of a variety of stakeholders, act as a sounding board for the acceptability of policies, and provide some amount of democratic legitimacy to decisions. When an issue is at the "frontiers of science" in which facts are in dispute, policy-level advisory committees are often used in conjunction with expert committees to add a social dimension to the discussion (Jasanoff 1990, vii). For example, the EPA Administrator's Toxic Substance Advisory Committee (ATSAC) was chartered to advise the agency "on policy, technical and procedural matters relating to the environmental, economic, and social aspects" related to the Toxic Substances Control Act (TSCA), but to "generally defer" to the Science Advisory Board on scientific matters (Ashford 1984, 75). Policy-oriented committees may create subcommittees to inform them about the more technical aspects of an issue.

[6] There are, however, interesting questions about whether lay people should play a more active role in expert committees. Jasanoff (1990) discusses at length the social construction of advice from expert advisory committees. This raises the issue of whether lay people should participate in expert committees or other "objective" policy advising roles and whether expert advice can be regarded as objective. It is certainly true that some technical issues are not entirely objective: risk assessment, for example, often requires the comparison of many different kinds of risks,

Many policy-level committees operate "inside the beltway" and participants may be heavily weighted, as one analyst has commented, toward the "usual suspects"—lobbyists for environmental, business, and other interests (Applegate, 1997). Regulatory negotiations and policy dialogues are designed to generate the substance of environmental decisions through consensus among these various stakeholders. The Common Sense Initiative Council, for example, brings together—through its six subcommittees—stakeholders from six major industrial sectors in order to reach consensus on new approaches to "cleaner and cheaper" environmental regulation within the sector. Study commissions are often tasked with producing one or a series of reports on a defined topic over a discrete period of time. The Presidential/Congressional Commission on Risk Assessment and Risk Management (mentioned in the Introduction), which produced a series of reports on the role of risk assessment in environmental decision-making, is one such group. Standing advisory committees, on the other hand, are often written into legislation to be called upon for policy advice over an indefinite period of time. The Clean Air Act Advisory Committee, for example, advises EPA on the "potential health, environmental, and economic effects of programs" and their "potential impacts on the public, state and local governments, and the regulated community" from the point of view of a variety of stakeholders (CAAAC, 1998).

While expert and policy-level advisory committees are typically of the "inside the beltway" variety, site- or region-specific advisory committees deal with a defined geographic area and set of stakeholders. Many agencies with environmental responsibilities have moved toward more locally-based advisory committees in recent years. Trends in environmental management, such as ecosystem management, community-based environmental protection, and integrated watershed management, as well as attention to environmental justice issues, have all necessitated the more active involvement of local communities and interests.

At the site-specific level—although participation is still heavily weighted toward interest group representation—participants are more likely to be "closer to the people" than in policy-level

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and thus requires certain subjective valuations. Although important, these issues are not taken up in this paper.

committees. As committees become more site-specific, boundaries between stakeholder affiliations are also likely to be more blurred: the leader of an environmental group may also be a business or home owner in the region. One might also expect a higher level of interest among the wider public in the outcomes of the process, and therefore more widespread participation. At the site-specific level, it may be easier to locate and engage poorly funded or poorly organized groups. The potential for conflict may also be greater, as the consequences of decisions may be more directly borne by those involved. The result is that, while national policy-level committees represent a more traditional pluralist approach to decision-making, the site-level committees at least approach a more popular model of democracy.

EPA's main site specific committees are Community Advisory Groups (CAGs), recently established at a handful of Superfund sites (mainly those with environmental justice concerns) in order to provide communities with more input and access to site cleanup decisions.[7] CAGs are not chartered under FACA (this issue is dealt with specifically in Section 4) but comply with the "spirit" of the law and serve to illustrate how such site-specific advisory committees can function. EPA envisions CAGs as "bottom up" participatory efforts—communities must organize themselves prior to being certified by EPA. The groups are explicitly local—EPA specifies that at least half of the members should be residents who live near the site with a "direct, personal interest in the site." The other half "might be made up of the medical community, local government, or real estate representatives" (EPA, 1996). The most obvious distinction between these site-specific groups and policy-level groups is that, in addition to those with an obvious conflict-of-interest (such as potentially responsible parties, remedy vendors, and lawyers involved in site-related litigation) EPA guidance says that non-local representatives of national groups, including environmental groups, should not be involved in the CAG. Instead, CAGs are intended as a "public forum for representatives of diverse community interests to present and discuss their needs and concerns related to Superfund" (EPA, 1995, 3).

How an agency uses these three different types of advisory committees reflects the concentration of that agency's environmental management responsibilities. EPA, as a primarily standard-

[7]EPA's community advisory groups (CAGs) were developed in response to a report issued in April 1994 by

setting and rulemaking agency, uses FACA mainly to charter a number of Washington-based expert and policy-level committees. In contrast, the Bureau of Land Management, the largest land manager in the western United States, has mostly region-specific committees. Because FACA can have different effects on site- and region-specific committees than on policy-level committees, these significant differences in focus mean that FACA-related issues can have profoundly different effects across agencies. The following section addresses some of the "chilling effects" that FACA may have on participation, particularly for the site- and region-specific advisory committees.

Section 2. FACA's Potential "Chilling Effect" on Public Participation

Although it was intended to increase public access to advisory committees and reduce the influence of special interests, FACA is often cited as an obstacle to public involvement, particularly in environmental policy.[8] For example, a 1994 study based on interviews with 54 resource professionals[9] found that respondents ranked FACA as the *greatest* legal barrier to ecosystem management (Schlager and Freimund, 1994, 3). This section examines how FACA has created such a barrier. In particular, it discusses two forms of a "chilling effect" on public participation. In the first, public groups who would otherwise contribute to environmental decision-making are confronted by FACA's procedural requirements and find that they create a barrier too high to surmount. In the second, ambiguity about the law's requirements and litigation arising from (or taking advantage of) this ambiguity has created a fear of any type of public involvement with entities not chartered under FACA. FACA's chilling effect, in both its forms, is particularly troubling at the local level, where participation may be more ad hoc and informal, consensus may be fragile, and problems may involve people who have very real personal interests at stake.

Environmental Justice Task Force (OSWER Environmental Justice Task Force Draft Final Report, EPA 540-R-94-004).

[8]See, for example, U.S. Interagency Ecosystem Management Task Force (1995), Brendler and Crosman (1996), and Schlager and Freimund (1994).

[9]Those interviewed included "Forest Service Regional Social Science Coordinators, General Counsels, Regional and Forest-level Ecosystem Management Coordinators, Forest Supervisors, District Rangers, BLM planners, NGOs, and private industry executives" (Schlager and Freimund, 1994, 1).

Chilling Effect: Procedural Barriers to Grassroots Public Participation

One way that FACA may introduce a chilling effect on participation is by creating procedural hurdles for establishing and operating an advisory committee. These hurdles may be so high that, from the public's viewpoint, overcoming them is simply not worth the effort. As a result, FACA can squelch the kind of grassroots or "bottom-up" participatory efforts integral to more responsive government in general and place-based environmental management efforts in particular.

One component of the barrier goes to the very heart of grass roots participatory efforts. The cost of becoming a formal partner in decision-making processes is paid by trading in a "bottom up" ethos for one which is decidedly "top-down." In establishing and running a FACA committee, all roads lead to Washington. Brendler and Crosman (1996, 8) point out, in reference to participation in Forest Service decision-making:

> The fact that decisions concerning advisory committees are made in Washington removes the chartering process from the local and regional levels, where many committees originate and seek to operate. Even requests for chartering that originate at Forest Service districts, must rise within a rigid bureaucratic hierarchy, increasing the delay and the risk of disapproval.

Turning over control is not just a psychological barrier—it extends even to the participatory process because FACA gives federal agencies power to adjourn meetings, approve agendas, and approve membership. Where trust in government is already low, as is the case in many environmental contexts, ceding such power to the government may undermine the legitimacy of a participatory process from the start. Yet the choice not to charter under FACA excludes a group from giving formal advice to agencies.

Should a group choose to seek a charter under FACA, the hurdles are significant. Approval for establishing a new advisory committee must be granted by an agency, the president, or legislation. After a new committee is approved, the chartering process can take anywhere from six months to a year. Once operating, a committee must notify its sponsoring agency of upcoming meetings for publication in the *Federal Register,* coordinate with a designated federal

officer, and often seek approval of all changes in membership. The expended time and effort it takes to incorporate a committee often creates unrealistic expectations about the kind of impact an advisory committee can have on decision-making. Agencies are often unwilling to, or legally restricted from, meeting these expectations.

The story of the Blue Mountains Natural Resources Institute Advisory Committee (BMNRI) is a telling example of the difficulties of forming a FACA-chartered advisory committee.[10] Following legal challenges to President Clinton's Northwest Forest Plan on the basis of FACA violations, the Forest Service required that all non-governmental groups wishing to continue advising on Forest Service policy charter under FACA. BMNRI chose to do so. The BMNRI Advisory Committee includes representatives of county, state, federal, and tribal governments and non-government institutions and interests. Its objective is to advise the Forest Service on resource issues by conducting research, demonstrating technologies, and facilitating cooperation among various interests in the Blue Mountains of Washington and Oregon. BMNRI was "established" under FACA after being written into the Food, Agriculture, Conservation, and Trade Act of 1990 as a result of the sponsorship of Congressman Bob Smith (R-OR). The legislation was passed in 1990 and the charter approved in 1991 (although the Institute apparently did not find out about the approval until 1994). It took until 1995, however, for the Forest Service to approve BMNRI's membership, and only then—five years later—could the Institute begin giving formal advice to the Forest Service. Changes of administration, turn-over at the Forest Service, and policy changes about what constituted "balance" on committees all contributed to the delays. These issues are typical of federal policy-making, but FACA was the vehicle by which they were translated, in this case, into a five-year hurdle for bottom-up participation.

Chilling Effect: "FACA-phobia"

While FACA's procedural requirements may chill participation by raising barriers to members of the public who might otherwise participate, the Act's ambiguity gives rise to the second form of

[10] Much of the information on the Blue Mountains Natural Resources Institute comes from conversations with Lynn

chilling effect—in this case, on the part of agencies. Dubbed by one observer as "FACA-phobia," the effect arises when agencies choose not to interact with interest groups in ad hoc meetings out of confusion over what FACA requires and a subsequent fear of being sued for violating it (Brendler, 1996, 46). The fear is well founded. A number of lawsuits described in the remainder of this section have charged that agencies have violated some aspects of FACA—either by neglecting to charter committees which should have been governed by FACA or by violating aspects of the law for committees which were chartered. Prior to these well-publicized lawsuits, many agencies used advisory committees without knowing if FACA should govern them or not.

The result of increased legal attention to FACA has been "a fear of litigation that makes agencies wary of all kinds of collaborative efforts" (Brendler, 1996, 46). A 1995 report issued by the Interagency Ecosystem Management Task Force (IEMTF), an interagency group of senior level federal agency officials established in 1993, recognized this phenomenon. It stated that "many federal agency personnel believe that the Act restricts virtually all contacts with nonfederal entities, and are fearful that any such contacts will subject them to legal action" (IEMFT, 1995, Vol.1, 34). FACA-phobia may also be a convenient excuse: some environmentalists charge that agencies often refuse to listen or meet with them on the grounds that to do so would be in violation of FACA. Regardless of agency intent, FACA-related litigation is clearly a "convenient tool for interest groups to stymie a wide array of government actions" (Brendler and Crosman, 1995, 5).

FACA-phobia can cause government agencies to pull out of participatory processes or avoid them in the first place. The former can be particularly damaging when agencies remove themselves from collaborative processes, disrupting what is already often a fragile process. As the sponsor of one locally-based collaborative process on forest issues said: "Its been very difficult not having the representatives who manage 70 percent of our watershed at the table" (Durbin, 1994).

Starr of BMNRI.

Although FACA's requirements may seem fairly straightforward, most federal agencies find them to be extremely ambiguous. Agencies and judges alike are still struggling over the exact meaning and scope of the law. According to Croley (1996, p.120), "different personnel within a single agency sometimes disagree about how far their agency can go to promote public participation or otherwise consult with outside parties before bumping up against the FACA."

There is a great deal of confusion outside of agencies as well regarding what kind of interaction is governed by FACA. In *Northwest Forest Resources Council v. Espy* [846 F. Supp 1009, 1010 (D.D.C. 1994)] the court referred to FACA as an "uncomfortably broad statute... that would, if literally applied, stifle virtually all non-public consultative communication between policy-making federal officials and a group of any two or more other people, any one of whom is not in government service." In response to this problem, the Committee Management Office at the General Services Administration (GSA), the agency that oversees FACAs, is currently developing new regulations to clarify the kinds of interactions with the public that are subject to FACA.

FACA-phobia arises in large part because of ambiguities in the act. These ambiguities fall into three categories: scope, committee membership, and conflict-of-interest. *Scope* deals with what type of participation would fall under FACA. *Committee membership* deals with how interests are balanced on a committee. And, *conflict-of-interest* deals with balancing the need for unbiased advice with the need to involve interested stakeholders. Clarity on these issues would give agencies more certainty about the limits of participatory efforts, prevent some of the litigation that fuels FACA-phobia, and show where exemptions may be needed in order to foster participatory decision-making that is more than cursory. Each of the three issues are discussed separately below.

Scope: What kind of participation is governed by FACA?

FACA defines an advisory committee subject to its provisions as follows:

> "any committee, board, commission, council, conference, panel, task force, or other similar group, or any subcommittee or other subgroup thereof (hereafter in this paragraph referred to as "committee") which is--
>
> (A) established by statute or reorganization plan, or
>
> (B) established or utilized by the President, or
>
> (C) established or utilized by one or more agencies
>
> in the interest of obtaining advice or recommendations for the President or one or more agencies or officers of the Federal Government."[11]

On December 2, 1987 the GSA Committee Management Secretariat issued a Final Rule on Federal Advisory Committee Management (41 CFR Part 101-6). This rule provides agencies with guidance regarding the applicability of FACA, but some of its provisions are not traceable to the statutory language, and thus are not entirely dependable, unless courts have drawn similar conclusions.[12] In spite of these regulations, the interpretation of the words "established" and "utilized" continues to be a point of contention in many FACA lawsuits. Indeed, on August 4, 1997, the National Academy of Sciences petitioned the United States Supreme Court with respect to this exact issue.

While a common interpretation of the word "utilized" might conclude that FACA applies to any group from which the President or a federal agency receives advice concerning a particular policy, the courts have found otherwise. In *Public Citizen v.s. U.S.* (491 U.S. at 452, 109 S. Ct.), a case involving the President's reliance upon the American Bar Association's (ABA) Standing Committee on Federal Judiciary, the court stated:

> "Utilize" is a woolly verb, its contours left undefined by the statute itself. Read unqualifiedly, it would extend FACA's requirements to any group of two or more persons, or at least any formal organization from which the President or an executive agency seeks advice. We are convinced that Congress did not intend that result. A nodding acquaintance with FACA's purpose....reveals that it cannot have been Congress's intention, for example, to require the filing of a charter, the presence of a controlling federal official, and detailed minutes any time the President seeks the views of the National Association for the Advancement of Colored People (NAACP) before nominating Commissioners to the Equal

[11] 5 U.S.C. App. II Section 3(2) cited in Croley and Funk (1997, 472).

[12] In *Public Citizen v. U.S.* the court refused to support GSA's regulations "in interpreting the Act on the grounds that they were not promulgated until many years after the Act's passage and moreover were not promulgated pursuant to any statutory authority" (Croley 1996, p.124).

> Employment Opportunity Commission.[13]

In short, any strictly literal interpretation of FACA straightjackets even the most commonplace government dealings. The court based its argument on the fact that applying FACA to the president's consultation with the ABA would be an infringement of the President's power to nominate federal judges, and thus a violation of the Constitution's separation of powers doctrine.

One interpretation of the *Public Citizen* ruling is that it allows agencies to "rely on advice or recommendations from independently established groups so long as the agency does not exercise tight managerial control over such groups" (Croley 1996, 167). Nevertheless, much confusion still exists regarding FACA's reach. For those who are concerned about FACA's negative impact on public participation, the *Public Citizen* ruling is good news; it allows for more opportunities for interaction between the public and government agencies without requiring the formation of a federal advisory committee. Increased FACA exemptions are a double edged sword, however, because they result in less accountability and less legal recourse for groups seeking access to or representation in public decision-making processes. Future modifications of FACA, such as those currently being developed by GSA, hopefully will clarify this issue.[14]

FACA's scope is also limited by the fact that it applies only to groups that give advice as "a group, and not as a collection of individuals" (*Association of American Physicians & Surgeons v. Clinton,* 997 F.2d 898, at 913, D.C. Cir. 1993). Moreover, if a group functions as a collective but gives only general recommendations that do not relate to a specific policy, then it too will be exempt from FACA. Croley (1996, 155) states that:

> Providing collective policy advice to an agency on a specific issue renders an agency-established assemblage a group under the FACA, no matter how informally organized the group may be. At the same time, agency-established groups that do not provide specific advice on some policy issue fall outside of the act, no matter how formally organized they may be.

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[13] 491 U.S. at 452-53 cited in Croley and Funk (1997, 469).

[14] See Diagram 2 in Croley (1996) for a helpful analysis of the kinds of activities or committee characteristics that trigger FACA.

Thus, the applicability of FACA depends less on the character of the group and more on the purpose for which the group is convened. While the courts may make such a distinction, many federally-chartered advisory committees currently in existence, such as EPA's Good Neighbor Environmental Board, are chartered to explore issues that do not necessarily relate to a specific policy under consideration. Indeed, advisory committees that are chartered to discuss "general" policy issues tend to be created in order to address important, controversial topics, such as President Clinton's recently chartered advisory committee on race, and therefore benefit considerably from FACA's openness and balance requirements.

FACA does not prescribe remedies for violation of its scope provisions. With only one exception, federal courts have allowed agencies to make use of material developed in violation of this aspect of FACA, arguing that to order agencies to abandon fact-finding reports and/or recommendations that have already been completed would be excessive. For example, in a case in which the California Forestry Association sought to prevent the United States Forest Service from relying on a report that was developed in violation of FACA, the court argued that "the preparation of the report has already consumed millions of dollars. If the Forest Service needs a scientific evaluation of the Sierra Nevada for its own use, an injunction prohibiting its use of the SNEP study would require it to commission another (presumably duplicative) study of the Sierra Nevada" (*California Forestry Association v. United States Forest Service*, 102 F.3d 609, 614 D.C. Cir. 1996).

In *Alabama-Tombigbee Rivers Coalition v. Fish and Wildlife Service* [26 F.3d 1103 (11th Cir. 1994)], however, the judge did prevent the government from using a report prepared in violation of FACA. This one exception provides illuminating insights into the fine line agencies must walk in deciding whether to invoke FACA when soliciting advice. The case concerned a report prepared by a scientific advisory committee that was formed after the U.S. Fish and Wildlife Service (FWS) published a proposed rule to list the Alabama Sturgeon as an endangered species. The advisory committee, which was charged with assessing the current status of the species, consisted of four non-governmental scientists appointed by FWS. Originally, FWS had intended the scientists to provide individual evaluations and recommendations, thereby exempting the

committee from FACA. However, shortly before the committee was convened, FWS "substantially changed the structure of the 'panel.' The modified structure . . .was for the scientists to meet and compile a single collective report" (*Alabama*, 1105). When the Alabama Congressional delegation expressed concern about the possibility of bias, FWS added five new scientists, but rejected all of those proposed by the delegation. A few days before the report's planned release, the Alabama-Tombigbee Rivers Coalition (a group of thirty-four businesses and organizations operating in Alabama and Mississippi) filed a complaint seeking a temporary restraining order and a permanent injunction against the release, use of, or reliance upon the report on the grounds that FWS had violated FACA's fair balance and openness provisions. The court stated that "to allow the government to use the product of a tainted procedure would circumvent the very policy that serves as the foundation of [FACA]." Furthermore, it found "injunctive relief *as the only vehicle that carries the sufficient remedial effect* to ensure future compliance with FACA's clear requirements" (Ibid, 1107, emphasis added).

Committee Membership: Who should participate?

Prior to FACA, at least 105 of the 155 members of the National Petroleum Council, a government advisory committee, were directly involved in the oil industry (Gage and Epstein, 1977, 50005, footnote 36). Today, this would be a clear violation of FACA's requirement that advisory committees be "fairly balanced in terms of the points of view represented and functions to be performed" (FACA, Section 5(b)(2)). In most instances, however, determining whether a committee is in compliance with FACA's balance provision is not so simple. As many have pointed out, the Act's language leaves much room for interpretation of its use of the word "balanced." Must a committee "be divided evenly by interest sectors or is one member, with a viewpoint differing from the majority, sufficient to balance a committee?"(Gage and Epstein 1977, 50004). The general consensus in the legal literature is that the criteria for balance should vary according to the subject matter of the committee. Thus, "where the issues are broad and policy-oriented, advisory committees should also be broadly representative, along technical, social, and political dimensions. By contrast, where the issues are more technical . . . FACA may be satisfied by an adequate representation of relevant scientific viewpoints" (Jasanoff 1990, 47).

FACA itself contains no specific guidelines regarding recruitment or membership. When a committee is created by an agency, the burden is on the agency to determine how to interpret the word "balanced." For example, a DOE memo regarding committee membership states that, in addition to complying with FACA's guidelines, "consideration shall also be given to such interests as the geographic regions of the country; minority groups; women's organizations; public and private academic institutions, including Black Colleges and Universities; physically challenged individuals and groups; and the public at large" (DOE 1996). When a committee is created by Congress, on the other hand, the statute normally specifies the size and duration of the committee, the interests to be represented, the qualifications necessary for membership, and the recruitment procedures to be undertaken.[15]

Conflict-of-Interest: Who shouldn't participate?

In addition to the ambiguity surrounding the issue of balanced membership, another common criticism of FACA is that it contains no provisions for preventing conflict-of-interest among those who serve on the committees. Indeed, some have argued that FACA's fair balance requirements *require* the participation of "not only those who are to be regulated, but also those who would be benefited" (Nuszkiewicz 1992, 968). In *National Anti-Hunger Coalition v Executive Committee* (557 F. Supp 524, D.D.C. 1983), Judge Gerhard Gesell took a similar position, regarding the Grace Commission which was established in order to make recommendations about a federal food-stamp program. He ruled that the commission had violated FACA's balanced membership requirement because it did not include someone who would be directly affected by the program, namely a food stamp recipient (Nuszkiewicz 1992, 969). Judge Gesell's argument implies that FACA's balance provisions can only be satisfied through *direct* participation, and not through representation of those interests, through, for

[15]For example, legislation enacting the National Gambling Impact Study Commission first states the role of the commission -- "to conduct a comprehensive legal and factual study of the social and economic impacts of gambling in the United States on - A) Federal, State, local, and Native American tribal governments; and B) communities and social institutions generally, including individuals, families and businesses within such communities and institutions" and then provides that "members shall be individuals who have knowledge or expertise, whether by experience or training, in matters to be studied by the Commission . . . and may include Federal, State, local, or Native American tribal officers or employees, members of academia, nonprofit organizations, or industry, or other interested individuals" (Smith 1997, p.29, quoting Public Law 104-169, 110 Stat. 1482, August 3, 1996).

example, a low-income advocacy group.

Such an interpretation of FACA's balance requirements poses some serious problems with respect to conflict-of-interest law. The United States Code makes it a criminal offense to :

> participate personally and substantially as a Government officer or employee [including a special Government employee], through decision, . . . recommendation, the rendering of advice, investigation, or otherwise, . . . [in any] particular matter in which, to his knowledge, he, his spouse, minor child, general partner, . . . or organization . . . has a financial interest (Nuszkiewicz, 1992, 960 quoting 18 U.S.C., Section 208, Supp. I 1989).

From a legal standpoint, therefore, the question of whether a FACA member with a financial interest in the committee's charge is violating conflict-of-interest law rests upon the question of whether or not (s)he is considered to be a special government employee. This, in turn, depends on whether the member was selected in an individual or a representative capacity. If an individual is selected to serve in an independent capacity based on his/her individual qualifications, then (s)he is considered to be a special government employee, and is required to submit either confidential financial disclosure statements or public financial reports. By contrast, if an individual is selected as a representative of a group, then (s)he is not considered a special government employee and therefore not subject to conflict-of-interest law. There is no simple answer to whether FACA members serve in an individual or representative capacity. In some instances, particularly in the case of scientific/technical committees, members are selected for their individual expertise. However, in the case of federal advisory committees dealing with policy issues, such as EPA's National Environmental Justice Advisory Council, members are more likely to be selected as representatives of particular interests.

Conclusion

Although both types of chilling effects discussed in this section—the barrier to "bottom up" participation and FACA-phobia—theoretically affect all types of advisory committees, the greatest impact is likely to be felt among the site- and region- specific committees. Agencies, such as EPA and DOE, the majority of whose advisory committees deal with national policy-

making, are subject to less FACA-related criticism—and are much less fearful of lawsuits resulting from it—than the Forest Service and Bureau of Land Management, the majority of whose advisory committees deal with local and regional issues. As all of these agencies pursue more participatory management efforts aimed at the local level, FACA's procedural requirements will circumscribe the ability of groups to form and provide timely advice. Moreover, it is in this atmosphere where issues of "balanced" membership and conflict-of-interest are likely to be most fuzzy and untested in the courts. Local stakeholders are more likely to represent a variety of interests—one member can quite easily be an environmentalist, business owner, taxpayer, and an array of other "interests." How should these multiple interests be balanced? It is also more likely that members will be participating in an "individual manner," creating complicated conflict-of-interest issues. How should the need for involvement by affected locals be balanced against their obvious personal interest in the outcome of decisions? Unfortunately, it is also in this arena where avoiding FACA by circumscribing participation may have the most devastating effect on trust and perceptions of agency legitimacy.

The chilling effects discussed in this section are not the only ones by which FACA has influenced public participation. FACA has also provided a lever by which the number of advisory committees can be reduced in the name of fiscal responsibility. Recent efforts to limit the number and costs of advisory committees have come up against a countervailing effort to make federal policy-making more participatory. The next sections examines how these competing trends have played out in the government as a whole, and in three agencies with environmental responsibilities.

Section 3. Trends in Federal Advisory Committees (1985-1997)

Because they are often taken to be unnecessary or wasteful, advisory committees have long been a popular item on the budgetary chopping block. In fact, one of FACA's original goals was to reduce the number of advisory committees. While the law acknowledges that advisory committees can be a "useful and beneficial means of furnishing expert advice, ideas, and diverse opinions to the Federal Government," it also explicitly states that they should be used sparingly,

stating that "new advisory committees should be established only when they are determined to be essential and their numbers should be kept to the minimum necessary" (FACA, Section 2(a) & 2(b)(2)).

The law continues to be a lever for reducing the number of advisory committees. The Clinton Administration's "reinventing government" initiative included strong measures to reduce the use of advisory committees in order to lower related expenses. In particular, Executive Order 12838, signed on February 10, 1993, ordered agencies to reduce the number of discretionary committees (those "authorized" by Congress or established by agencies) by one-third. New discretionary committees that exceeded an agency's ceiling, as established by the Executive Order, were subject to review and approval by the Director of the Office of Management and Budget. In order to ensure that agencies reduced the costs, as well as the ***number*** of committees, Vice-President Gore also issued a memorandum on June 28, 1994 in which he directed agencies to lower their advisory committee expenditures by at least 5 percent. While this may seem like a fairly modest goal, it is a tall order given that total federal advisory committee expenditures have *risen* almost every year since 1985.

At the same time that the Clinton Administration has asked agencies to reduce their use of advisory committees, it has advocated that agencies broaden participation in regulatory decision-making and experiment with consensus building techniques. Croley (1996) points out that "establishing cooperative working relationships with outside parties is precisely the type of agency activity that could in many circumstances trigger the FACA thereby ***requiring*** the creation of advisory committees" (1996, 114). The encouragement of public involvement on the one hand, and the restriction of the use of advisory committees on the other, places federal agencies in a bind since they "cannot form more cooperative partnerships with parties interested in regulatory issues and, simultaneously curtail their use of advisory committees" (Croley, 1996, 114). In order to negotiate this dilemma, agencies can either avoid public participation altogether or utilize alternative forms of public involvement which do not trigger FACA.

This section describes the impacts of these competing policy trends by examining the change in

the use, cost, and membership of advisory committees over the past decade. It looks at government-wide aggregate data and at data for three agencies with significant environmental responsibilities—EPA, DOE, and DOI. It addresses the questions of whether these forces have resulted in more or less participation, and what type of participation has been encouraged or discouraged.

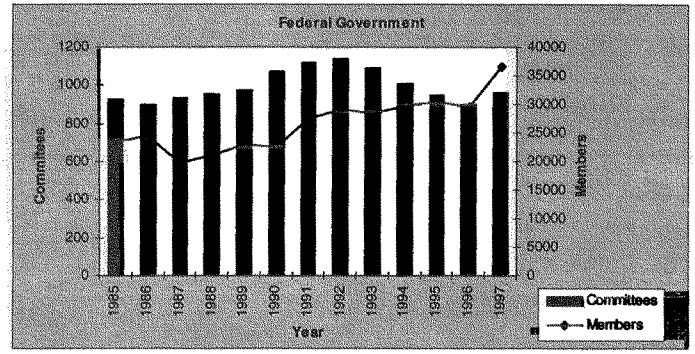
Government-wide Trends

Aggregate data indicate that, although the number of committees have gone down since 1993, costs have not. The number of advisory committee members and meetings have also continued to rise. As indicated in Figure 1, between 1985 and 1992, the number of advisory committees rose gradually, from 926 to 1,141. Since then, their number has declined until a small rise in 1997. During the same period, the number of members serving on advisory committees has generally risen. In 1997, while committees were down to 963 from 1,141 in 1992, membership had climbed from around 29,000 to a record high of 36,586 over the same period (GSA 1998). This increase in the number of committee members is partly due to a proliferation of subcommittees. Rather than creating entirely new committees with their own charters, agencies often seek to avoid administrative hassle by creating subcommittees of existing committees. While the *members* of subcommittees are included among GSA's record of total members, the subcommittees are not counted as separate committees. Committee mergers also reduce the number of individual advisory committees without reducing the total number of members.

Along with the number of committee members, costs have also risen. The federal government spent $169 million on advisory committees during fiscal year 1997, compared to approximately $110 million in 1985.[16] In real terms, committee costs in 1997 had risen 54 percent from 1985 and 23 percent since 1994. In the face of the Clinton Administration's goal of *reducing* FACA expenditures by 5 percent, this increase is quite large.

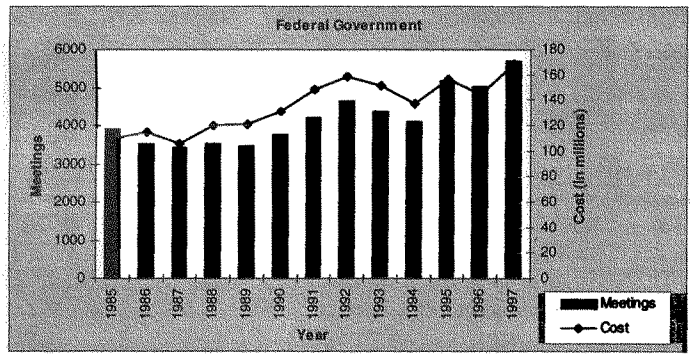
[16]Unless indicated otherwise, all expenses are provided in 1995 dollars. See Appendix A for exact figures. Costs were adjusted for inflation using the CPI-U, for all urban consumers for major expenditure classes, Table B-56, Economic Report of the President, February 1996.

Figure 1. Total Federal Advisory Committees and Membership, 1985-1997



Source: General Services Administration, Annual Report of the President on Federal Advisory Committees, FY 1985 -FY 1997

Figure 2. Total Federal Advisory Committee Meetings and Cost, 1985-1997



Source: General Services Administration, Annual Report of the President on Federal Advisory Committees, FY 1985 - FY 1997

Environmental Protection Agency

At the end of FY 1997, EPA had 27 committees, a large increase from 1985, when it had seven, but only a small increase since 1993, when it had 25 (See Appendix B). As indicated in Figure 3, the number of members serving on EPA's advisory committees nearly doubled from 1993 to 1997. Since agencies must pay for travel and per diem expenses for committee members and staff, this increase in membership has resulted in a substantial increase in costs, which more than tripled since 1993.

EPA's advisory committees met over twice as frequently in FY 1995 as in FY 1994 but the number of meetings has since dropped off (See Figure 4).[17] The increase is mainly due to the Common Sense Initiative Council (CSIC), chartered in 1995 to develop "cleaner, cheaper, smarter" environmental management solutions. CSIC consists of one parent council (made up of 32 senior level representatives of a variety of interests ranging from small business to environmental justice) and six business sector subcommittees. Including its subcommittees, CSIC met 151 times in FY 1995 (almost half of EPA's total FACA meetings) and cost the agency about $2.8 million. The Science Advisory Board had the next highest number of meetings—a total of 41. The combined cost of these two committees constituted about 50 percent of EPA's total FACA expenditures in FY 1995.

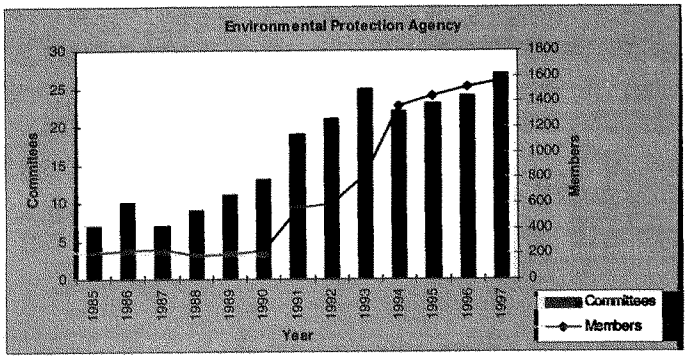
Department of Energy

As indicated by Figure 5, the number of DOE advisory committees has grown since 1993. DOE had a total of 22 advisory committees in existence at the end of FY 1997 in comparison to 17 in 1993 (see Appendix C). Membership has also grown. In 1997, DOE's advisory committees had a total of 808 members, a 25 percent rise over 1993's 645 members.

As indicated in Figure 6, FY 1996 set a record for the number of meetings held, while 1995 set a record for costs associated with DOE's advisory committees. Similar to the Common Sense

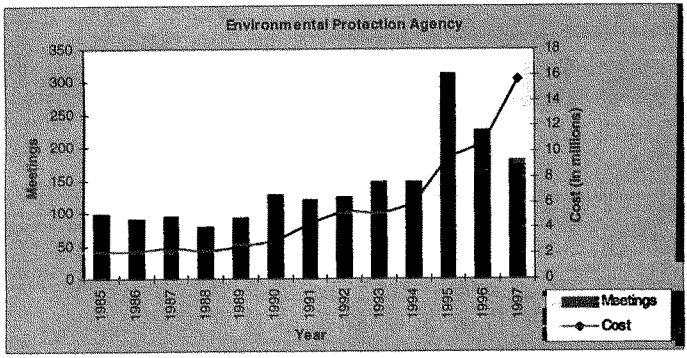
[17]It should be noted that FACA meetings can be scheduled for as long as two or three days.

Figure 3. EPA Advisory Committees and Membership, 1985-1997



Source: General Services Administration, Annual Report of the President on Federal Advisory Committees, FY 1985 - FY 1997

Figure 4. EPA Federal Advisory Committee Meetings and Costs, 1985-1997



Source: General Services Administration, Annual Report of the President on Federal Advisory Committees, FY 1985 - FY 1997

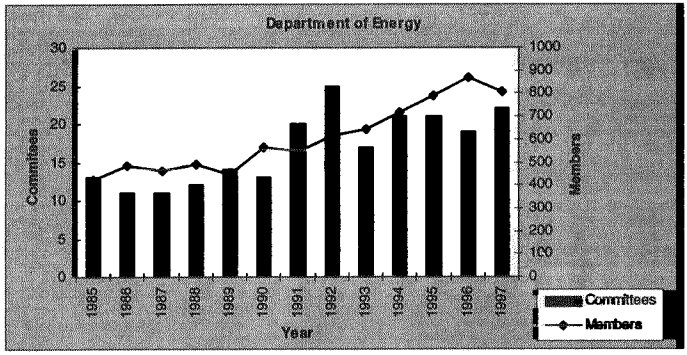
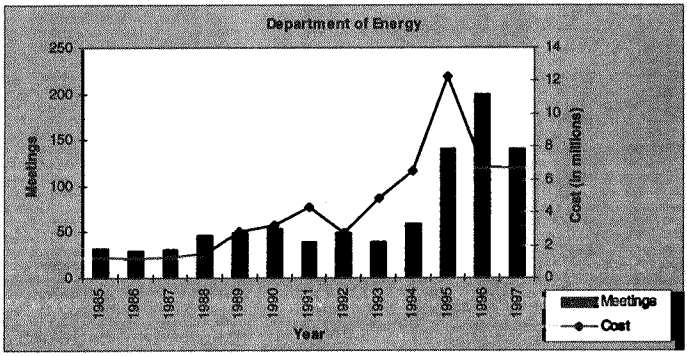


Figure 5. DOE Advisory Committees and Membership, 1985-1997

Source: General Services Administration, Annual Report of the President on Federal Advisory Committees, FY 1985 - FY 1997

Figure 6. DOE Advisory Committee Meetings and Costs, 1985-1997



Source: General Services Administration, Annual Report of the President on Federal Advisory Committees, FY 1985 - FY 1997

Initiative Council at EPA, one of DOE's committees, the Environmental Management Site-Specific Advisory Board (SSAB), held the majority of the agency's meetings. The SSAB consists of one central committee and 12 subcommittees, one subcommittee for each major DOE clean-up site.

Department of Interior

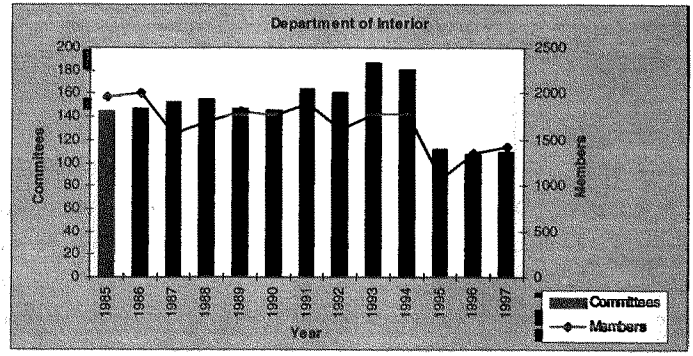
As indicated by Figure 7, DOI's committees reached a peak of 186 in 1993, and then declined, largely as a result of mergers, to 110 by the end of FY 1997 (see Appendix D). In contrast to DOE and EPA, committee membership at DOI has in fact *decreased* since 1993. While 1,779 committee members served in 1993, only 1,428 served during 1997. These trends can mainly be explained by the Bureau of Land Management's consolidation, in 1995, of 83 District Advisory Councils and District Grazing Advisory Boards into 23 Resource Advisory Councils covering the same geographic regions. Although each newly-formed committee met only a few times in 1995, by 1996 many met over six times during the year, leading to a rebound in the number of meetings, number of members, and cost. The consolidation has reportedly also broadened the diversity of stakeholders involved.[18]

Discussion

Based on this data, what can we say about the trends in participation through advisory committees? Aggregate data—as well as some agency level data—show a reduction in committees; but, the number of members, the number of meetings and costs have mostly risen since 1993. As discussed above, these trends can largely be explained by the proliferation of subcommittees and the intensive use of committees for major policy initiatives, such as the Common Sense Initiative. All of these data suggest that, at least in terms of person-hours spent on participation—the efforts to limit the number of advisory committees have not led to much of a reduction in existing levels of participation through advisory committees.

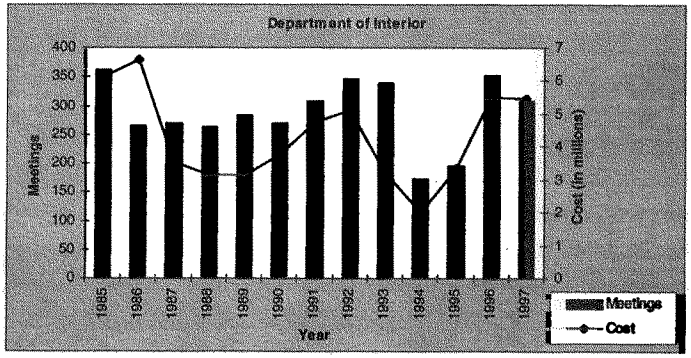
[18] Conversation with Karen Slater, Intergovernmental Affairs Group, Department of Interior (March 24, 1998).

Figure 7. DOI Advisory Committees and Membership, 1985-1997



Source: General Services Administration, Annual Report of the President on Federal Advisory Committees, FY 1985 - FY 1997

Figure 8. DOI Advisory Committee Meetings and Cost, 1985-1997



Source: General Services Administration, Annual Report of the President on Federal Advisory Committees, FY 1985 - FY 1995

One important question that these data do not answer, however, is to what extent the ceilings placed on advisory committees have quashed participatory efforts before they were born. Anecdotal evidence, at least, suggests that agency personnel are under pressure not to increase the number of advisory committees. According to one employee at EPA, the ceiling on advisory committees has made participation a much more constraint-driven process.[19] Although useful stakeholder committees have not been eliminated, personnel know that they can not add more. They are left to choose among 1) creating subcommittees of existing FACA committees, 2) limiting the advice giving or consensual mission of advisory committees (thereby avoiding a FACA trigger) or 3) avoiding participation altogether.

This potential pre-emptive strike on participation created by the administration's policy to reduce the number of advisory committees adds one more element to the "chilling effects" discussed in the previous section. One way to see how these forces have affected public participation in government decision-making is to look at recent efforts across a number of agencies to institute site- and region- specific advisory boards and how these efforts have dealt with FACA.

Section 4. Site-Specific Advisory Boards at Five Agencies

All agencies with environmental responsibilities have seen recent attention to site- or region-specific advisory committees. EPA, DOE, and DOD have all instituted site-specific advisory boards at contaminated or potentially contaminated sites under their jurisdictions. The Bureau of Land Management (in the Department of Interior) and the Forest Service (in the Department of Agriculture) have made efforts to utilize regional advisory boards to assist in land and forest management decisions. All of these initiatives represent recent and mostly innovative policy approaches, suggesting that they ought to carry enough political weight to justify agency's efforts in incorporating the new committees under FACA. Yet, as discussed in Section I, site-specific committees are those most likely to run afoul of FACA's "chilling effects" and all efforts to expand the number of advisory committees are now subject to the administration's ceiling. How

[19] Conversation with Deborah Dalton, Deputy Director, Consensus and Dispute Resolution Program, U..S EPA.

different agencies have dealt with FACA in creating these committees reveals the extent to which FACA creates a barrier to participation. It also provides insights about how different agencies feel the forces of committee ceilings and FACA-phobia. It is useful to group the discussion around two sets of comparisons—EPA, DOE, and DOD on the one hand—and the Bureau of Land Management and the Forest Service on the other.

In the first comparison group, DOE is perhaps the most uninteresting case with respect to FACA, mainly because its twelve site-specific advisory boards (SSABs) are chartered under the law (FFER 1996, 47). Rather than threaten the administration's ceiling, however, DOE made the decision to charter its SSABs, not as separate advisory committees, but under one charter. In this way, they get twelve committees, but only have to claim one—the Environmental Management Site Specific Advisory Board. Not incidentally, this one committee accounted for 151 out of 199 advisory committee meetings, and nearly 40% of total advisory committee costs at the agency, in 1996 (GSA, 1997, 7&21).

DOD has formed approximately 200 Restoration Advisory Boards (RABs) at its closing and operating bases around the country. Unlike DOE, DOD has not chartered these committees under FACA. Chartering so many RABs under FACA was simply impractical—it would blow through the ceiling on advisory committees and create huge procedural commitments on the part of the agency. DOD's resolution has been to avoid chartering under FACA by complying with the spirit of the act—in terms of requirements such as openness and balance. In order to avoid triggering FACA, or bringing on litigation charging as much, DOD explicitly avoids seeking consensus among participants. As long as input comes from individuals on the advisory committee, rather than the advisory committee as whole, DOD feels that its actions do not violate FACA.[20] It is a fine line: according to one employee, if everyone on a committee starts to say the same thing, DOD can listen—the department just can't make any effort to seek agreement among members.

In taking this approach, DOD was following the guidance of the Federal Facilities Environmental

[20] Conversation with Marilynn Null, Air Force (March 25, 1998).

Restoration Dialogue Committee (FFER). This committee was formed in 1992 by EPA to develop recommendations for increasing public involvement in environmental cleanup decisions at federal facilities. In its 1993 Interim Report, FFER recommended that agencies use citizen advisory boards in order to obtain input from stakeholders affected by contaminated sites. FFER recommended that the boards adhere to the spirit of FACA (that committees be balanced, hold open meetings, and provide public notice), but advised *against* chartering them under FACA in order to avoid its administrative requirements. It stated that "many of the administrative provisions in both the FACA statutory language and its implementing regulations are burdensome at best and intrusive in many cases" (FFER 1996, 54). The report also noted that some of FACA's provisions, such as announcing meetings in the *Federal Register*, are inappropriate in a local context: "For local advisory boards, mechanisms such as publication in local papers or notice by mail may be more effective" (FFER, 1996, 54).

In following FFER's advice, DOD's efforts to avoid FACA have limited many of the most potentially beneficial aspects of public involvement. In particular, they have hampered opportunities for reducing conflict and generating more satisfying decisions through deliberation and consensus-seeking. In fact, according to one employee, if people begin to agree too much on an issue, DOD knows it is in dangerous legal waters.[21] To the extent that they can consider the output of advisory committees only as advice, they also risk making participation a cursory, therapeutic exercise—alienating those who have taken the time to be involved. Some committee members have complained that the restrictions on seeking advice undermines the credibility of the process—it is easier to ignore a bunch of individual voices than to ignore a committee speaking as one.

EPA has taken a similar approach as DOD in complying with the "spirit" of FACA, but deciding not to charter its community advisory groups (CAGs) under the law. In justifying this decision to the General Services Administration, EPA stated that "We believe community-based groups working together to solve local environmental problems should not be subject to FACA. Requiring such groups to be chartered under FACA or burdened with FACA regulations could be

[21] Conversation with Marilynn Null, Air Force (March 25, 1998).

a disincentive to forming such a group" (Wells, 1997). EPA avoids triggering FACA by keeping CAG formation and operation at arms length. According to agency personnel, EPA avoids FACA by not setting up committees, not funding them, and not running them.[22] Instead, they simply encourage their formation and support their work: according to EPA guidance, "EPA will not establish or control CAGs; however, the Agency will assist interested communities in CAG activities" (EPA, 1995, 2). Unlike DOD (and as we will see, the Forest Service), however, EPA appears to be more willing to encourage consensus and to let the committee speak as the voice of the public:

> EPA anticipates that the CAGs will serve primarily as a means to foster interaction among interested members of an affected community, to exchange facts and information, and to express individual views of CAG participants while attempting to provide, if possible, consensus recommendations from the CAG to EPA....Since the CAG, by definition, is intended to be representative of the affected community, the regulatory agencies will give substantial weight to the preferences expressed by CAG members. (EPA, 1995, 2 &15)

Of all of the five agencies discussed here, EPA appears to be the most comfortable operating outside of FACA, while not also circumscribing the influence of these committees on decision-making. The tension inherent in this approach however, is summed up by one EPA employee:

> It appears that unless an advisory committee is chartered under FACA, members can't provide consensus advice to the agency. This restriction forces us to act out a charade whereby we claim that local committee members are providing 'individual advice' instead of reaching consensus despite the fact that the real value of these committees' recommendations is precisely that they do represent a broad based consensus view. Citizens have no patience with this sort of sophism. (Pennock, 1997, 1)

It is clear that even at EPA, if efforts to engage local communities are working, it is *in spite of FACA*, not because of it. It may well be that the most effective public participation efforts are violations of the law.

The second comparison group includes the Bureau of Land Management (BLM) and the Forest Service. In this case, it is BLM that is the less interesting case with regard to FACA. As

[22] Conversation with Leslie Leahy, U.S. Environmental Protection Agency (July 1, 1998).

mentioned above, BLM has established 23 regional Resource Advisory Councils (RACs) for region-specific advice and has chartered them all individually under FACA. Chartering under FACA appears to give BLM some flexibility in the extent to which it can rely on RACs for advice. In the words of Secretary of Interior Bruce Babbitt, RACs are intended to "advise...on a variety of land management issues" and have "helped establish a model for collaborative management of the public lands" (BLM, 1997)

The Forest Service is quite a different story. Rather than charter committees under FACA like BLM or risk triggering the act like DOD, the Forest Service appears to have dealt with FACA by keeping the public at arm's length. There is irony in this. Much attention to FACA's impact on participation arose from events surrounding the Clinton administration's Northwest Forest Management Plan—an effort which, in its rhetoric at least, embraced grass roots collaborative processes as a vision of the future for federal forest management. In 1993, Secretary of the Interior Bruce Babbitt even visited one grass roots consensus group—the Applegate Partnership in Southwestern Oregon—saying "I may be a witness today to a very important beginning. It's important to know there are a few places on this battlefield where people have put down their weapons and started talking to each other" (Durbin, 1994).

The Clinton administration's subsequent Northwest Forest Plan called for similar approaches throughout Northwest forests. But following lawsuits charging that the Forest Plan had violated FACA (for reasons unrelated to these consensus groups) the Forest Service pulled out of involvement in most of these local participatory efforts.[23] Consensus groups were given the option to charter under FACA or members could participate in 12 region-specific committees organized under the FACA-chartered Provincial Interagency Executive Committee.

Most consensus groups have not chartered under FACA and many stakeholders expressed—at least initially—reluctance to participate in the Forest Service's FACA committees (Durbin,

[23] The lawsuit was the previously cited *Northwest Forest Resources Council v. Espy* in which the Forest Service was charged with violating the law by inappropriately excluding the public from access to a scientific panel engaged in research efforts supporting President Clinton's Northwest Forest Plan (Pryne, 1994). The Forest Service responded to the lawsuit by halting any activities which might violate FACA, including collaborative decision-making efforts (Brendler and Crosman, 1995, 1).

1994). As these FACA committees reach their five year mark, stakeholders are participating, but the committees have been most successful for advising on narrow topics rather than undertaking the wide-ranging deliberations that might substitute for the work of the consensus groups.[24] For groups not chartered under FACA, the lengths that the Forest Service goes to in order to avoid triggering the law have seriously hampered opportunities for constructive participation in decision-making. For example, Forest Service personnel avoid going to the same people over and over again for advice. As one Forest Service employee states, if the number of people they consult starts to narrow down, a "red flag" goes up that they might be triggering FACA.[25] This statement echoes a 1995 policy memo from Forest Service Chief Jack Ward Thomas to all Forest Service employees, stating that personnel can meet with non-governmental groups, "to hear their opinions, views, and advice; however, no group can become a preferred source of advice for the agency without sparking FACA concerns." The memo goes on to suggest the Forest Service's acute sensitivity to FACA-related litigation: "Remember too, that public perception is everything. If people observe you holding repeated private meetings with the same group, they may feel excluded and assume that FACA committee-formation requirements are being violated" (Thomas, 1995). In short, while the Forest Service would listen to the input of consensus-seeking stakeholder group, they would treat it just like input from an individual attending a public hearing or public meeting.

An examination of site- and region- specific advisory committees has underlined the comment from one EPA employee cited earlier—that the process of participation has become constraint-driven. In the best case, agencies become more creative about how they charter committees: DOE chose a twelve-in-one approach in order to avoid the ceiling on committees, while BLM chose to consolidate and achieve the same goal. In the more disturbing cases, agencies have intentionally limited their receptivity to the full potential of participation. DOD has drawn the line at receiving consensual advice, while the Forest Service has shut itself off from what had only recently had been claimed to be the wave of the future in forest resource management.

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[24] Conversation with Val Chambers, Public Involvement and Program Manager, U.S. Forest Service (July 6, 1998).
[25] Conversation with Val Chambers, Public Involvement and Program Manager, U.S. Forest Service (March 25, 1998).

Thus far we have discussed the implications of FACA for reducing participation by preventing participatory efforts before they start or eliminating them in order to trim federal budgets. But a number of FACA-chartered committees operate every year—963 in 1997, involving 36,586 members. FACA committees may only be second to public hearings in the number of non-governmental people they bring into administrative decision-making. The next section of the paper turns to how well these efforts perform when evaluated against some criteria for "successful" participation. We move from FACA's potential for reducing participation to its potential for fostering it.

Section 5. Evaluation of Federal Advisory Committees as Public Participation Mechanisms

The following section discusses how one might evaluate non-expert advisory committees as public participation mechanisms. What, for example, do government agencies hope to achieve by forming advisory committees? What are the goals against which advisory committees might be judged and how can we ascertain whether or not those goals have been met? Before answering these questions, it is helpful to locate our discussion in the context of the literature on public participation.

Any evaluation of public participation contains, either explicitly or implicitly, a set of philosophical assumptions about how democracies should function. At one end of the spectrum are those who argue that public policy should be left to the "experts." Fiorino (1990, 27) summarizes (but does not necessarily agree with) this position as follows: "Given the sheer complexity of the issues, the 'transcientific' nature of the factual premises, and the rapid changes in the definition of problems and their solutions, the lay public lacks the time, information, and inclination to take part in technically based problem solving." At the other extreme are those who value greater public participation as an end in itself, regardless of its policy impact or cost. Sheila Arnstein, author of the oft-cited "A Ladder of Citizen Participation" (1969), is often associated with this position. According to Lynn and Kartez (1995, 99), Arnstein believes public participation should "create citizen power through a partnership with citizen authorities, if not

outright citizen control."

The criteria developed in this section fall somewhere in the middle of this debate—they recognize a legitimate role for the public in decision-making, but see it as a necessarily shared responsibility with government. In this, our perspective is more akin to that of Edmund Burke (1968), who advocated citizen participation on the grounds that it serves "important legitimating and efficiency functions for public institutions by educating the public" (Lynn and Kartez 1995, 89). He also believed that the public is capable of providing the government with knowledge and ideas that have the potential to lead to innovative policy solutions.

The first step in any evaluation is to identify the goals of the particular program or policy to be evaluated. In any public participation process, each party has a set of goals which they hope to achieve as a result of the process. More often than not, different parties' goals will conflict. Consider a hypothetical committee convened to address the issue of urban sprawl. Environmentalists on the committee may evaluate the process according to whether they were able to prevent development, while real estate developers may use just the opposite criterion.

Despite their conflicting goals, however, the parties do have some common interests. For example, both sides may seek a fair and efficient process. These common interests suggest a set of "social" goals for public participation—goals which public participation ought to be expected to achieve but which transcend the specific interests of parties involved in a decision. The benefits of these goals spill over from the participants themselves to the regulatory system as a whole. How well they are achieved often depends as much on how participants feel about the decision-making process as by the substantive decisions made during it.

Based on a review of the public participation literature, we have developed a list of six social goals (see Table 1) which government agencies may find useful for evaluating their public participation programs. These include:

1. Increase public awareness and understanding of a particular issue or policy;
2. Increase agency's understanding of the values, preferences and policy recommendations of

potentially affected interests;
3. Generate new policy alternatives or policy-relevant information;
4. Increase trust in agency;
5. Reduce conflict among stakeholders; and
6. Cost-effectiveness.

Some argue that the criteria used to evaluate public participation should be based entirely on the substantive contribution of public participation to decision-making. Gage and Epstein (1977, 50010), for example, assert that if federal agencies ignore the advice of advisory committees "then the whole process is useless and ought not to exist." However, this assessment ignores the social "outcomes"—such as education, trust, conflict reduction—that can be achieved by the process of public participation which might result from the work of an advisory committee. For example, an agency might gain tremendous insight into a policy area as a result of a committee's recommendation, but feel compelled to reject it for political or budgetary reasons. This does not mean that the agency will simply ignore the committee's recommendation; it may revisit it at a more opportune time in the future. It is also possible that by providing a forum for representatives of conflicting interests to discuss a particular issue at length, advisory committees will improve relationships among stakeholders and thereby prevent future litigation. Finally, even if a recommendation is not adopted, the existence and work of a committee may still have a valuable impact on public awareness or understanding of an issue.

The sub-sections that follow describe each goal in more detail, and discuss how advisory committees might fare in achieving them.[26] The GSA and others interested in evaluating public participation should assist agencies in the development of performance measures based on these goals, along with other agency goals and expectations vis-a-vis advisory committees.

Goal 1. Increase Public Understanding and Awareness of a Particular Issue or Policy

Advisory committees have two educational objectives—educating participants and educating the wider public. The first is more easily achieved and measured. The pre-existing experience and

[26] Although this discussion focuses on federal advisory committees, the goals discussed are applicable to other forms of

knowledge of participants, coupled with on-going face-to-face discussions and access to technical material, common to federal advisory committees, is likely to provide a good learning atmosphere. The extent to which participants become educated about relevant issues can be determined through pre- and post- surveys that measure what, if anything, participants learned from the process.

Because of their relatively small size and the limited media attention most advisory committees receive, they are less likely to achieve the second educational objective—informing a wider public. Nevertheless, education of this wider public is one of the most commonly-cited goals of public participation programs and is important to consider. According to Brendler (1996, 45) it is also a goal of FACA, which "says that agencies may not gather advice or recommendations from a group of interested people without taking specific steps to make sure that those who are not part of the group have a fair chance to hear what is being said and add their own opinions."

While many advisory committees are unknown to the general public, others receive extensive media attention and play an important role in shaping public opinion. Indeed, it has become quite common for presidents to form a commission under FACA as a way to demonstrate their administration's recognition of the importance of an issue. For example, President Bush's formation of the National Commission on AIDS, chaired by basketball star Magic Johnson, raised AIDS awareness and helped reduce the stigma associated with the disease.

Directly measuring the effect of advisory committees on the wider public's knowledge of an issue is a daunting task, because so many factors influence public knowledge and opinion. However, proxies can be used for estimating the attainment of the goal. First is the issue of access. In order for advisory committees to increase the public's understanding and awareness of issues, the public must first be informed about their existence. Attendance at committee meetings or visits to a committee's web site are an indication of public awareness. Surveys could be used to measure the extent to which those who were involved, either by attending meetings or visiting web sites, felt that the committee increased their understanding of a particular issue.

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public participation as well.

Second is media contact. If newspapers report regularly on the activities of a committee, such as the Gulf War Syndrome Presidential Advisory Committee, then the public is more likely to learn about the committee's findings and recommendations. This is relatively easy to measure. More difficult to assess is the quality of the information provided. Advisory committees have the potential to serve as an excellent source of unbiased information regarding a particular policy area, but this is by no means guaranteed.

The efforts of agencies to inform the general public about advisory committees will be a decisive factor in whether or not advisory committees affect the general public's trust (see also Goal 4) of an agency. In order for advisory committees to affect trust, the general public must first be made aware of their existence. More often than not, however, advisory committees operate in relative obscurity. If an agency is concerned about public distrust, it should therefore make an effort to increase public awareness of advisory committees. Committee meetings may be closed or partially closed to the public based on provisions of the Government in the Sunshine Act (Public Law 94-409). While only 42 percent of all federal advisory committee meetings were open to the public during FY 1997, virtually all of EPA, DOE, and DOI advisory committees were open to the public.

FACA requires agencies to notify the public of federal advisory committee meetings through the *Federal Register* at least 15 days in advance. While this is helpful for the organized and politically savvy stakeholders who skim through the *Federal Register* on a regular basis, it is likely to exclude most potentially affected interests. Agencies that make a greater effort to keep the public aware of committee meetings and reports through other approaches, such as notices in local newspapers or posters in highly frequented locations, are likely to be much more successful at increasing attendance among non-participants than those that simply adhere to the letter of the law.

Goal 2. Increase Agency's Understanding of the Values, Preferences and Policy Recommendations of Potentially Affected Interests

By providing an opportunity for stakeholders to express their concerns, agencies can incorporate stakeholders' values, preferences and policy recommendations into the policy development process, and better anticipate the consequences of policy decisions. The relatively small size and fixed membership of advisory committees should be conducive to in-depth discussions of issues. On the other hand, their small size may limit their ability to represent the diversity of stakeholders in a particular policy area. While FACA requires that committees be "balanced," there is always the risk that an important stakeholder will be excluded (either intentionally or unintentionally), particularly because participants are selected by the federal agency.

It is also important to consider that with the proliferation of subcommittees, many advisory committees are actually quite large. Full committee meetings can last as long as two to three days and may include hundreds of people. This increased scale undoubtedly affects the dynamics of committee meetings as it forces the committee (when meeting with subcommittees as well) to adopt highly formal procedures for participation. The ability of an individual member to shape the direction of the debate, or even participate in it, is greatly reduced when he/she must compete with 200 other members. Efforts to increase representation by increasing the size of the committee or by forming subcommittees must be balanced with a consideration for how such changes may affect the efficiency and quality of the committee's work.

Interviews and surveys of members of the advisory committee, the agency, and other interested parties could be used to establish whether an advisory committee has increased the agency's awareness of the values, preferences, and policy recommendations of stakeholders. The subject of committee meetings (all of which are recorded in meeting minutes housed in the Library of Congress) may reveal whether committee members raised issues which the agency would have been likely to overlook or ignore.

Another important component of this goal relates to the participatory process and how much control participants have over the committees, agenda, topics to be discussed, and objectives.

Whoever sets a meeting's agenda establishes the parameters of the conversation. FACA requires that the sponsoring agency authorize every agenda, but there is a degree of flexibility in this requirement. For example, agencies may authorize an agenda that is drafted by non-agency committee members. If the agency is maintaining fairly strict control over the agenda, it may sabotage its relationship with the participants, as well as undermine its ability to learn about the values and preferences of potentially affected interests.

Goal 3. Generate New Policy Alternatives or Policy-Relevant Information

Assuming that agencies comply with FACA's balance provisions, the reports and recommendations that result from advisory committees should reflect a diverse array of perspectives. This breadth of perspective, combined with repeated meetings in which committee members have the opportunity to get to know one another personally, is rare and has the potential to lead to particularly innovative recommendations. This potential outcome of advisory committee deliberations is the driving force behind such policy innovations as regulatory negotiations and policy dialogues, but the potential for increasing substantive quality and developing innovative solutions exists in any advisory committee.

A survey of participants, agency officials and experts in the field could help to establish a basis for comparing the committee's recommendations and reports with the policy alternatives or information that existed prior to the establishment of the committee. One could also research the legislative and rulemaking history of the issue to determine whether the committee's findings and recommendations were innovative.

Goal 4. Increase Trust in Agency

One of the most important goals of public participation is to build trust. Arguing that public participation should increase trust is not meant to imply that agencies necessarily deserve the public's trust. Trust is established, not solely by delivering a desirable outcome, but also by

ensuring that decisions are the result of a fair process.[27]

When evaluating public participation according to how it affects trust in the sponsoring agency, it is important to distinguish between internal trust (from the perspective of participants) and external trust (from the perspective of the general public or non-participants). This is especially true in the case of advisory committees since they are often viewed with skepticism by non-participants. FACA's balance and openness provisions help to promote external trust by ensuring that interested parties are able to gain access to the discussions and/or material on which an advisory committees' policy recommendations are based. The criteria discussed in Goal 1, concerning increased public understanding and awareness, serve as a good indicator of whether or not a committee is likely to increase external trust.

This is not meant to imply that there is no relationship between internal and external trust. Internal trust is created within the committee, but its reach can extend far beyond the confines of that particular committee. Most participants in non-technical advisory committees serve as representatives of particular stakeholder interests. These individuals are likely to share their experiences on the committee with their respective organizations. To the extent that there is communication between participants and non-participants, the factors which affect internal trust may also affect external trust.

Internal trust depends on many factors, including the amount of resources and time allotted for the committee, seniority and authority of personnel involved, and the internal dynamics of the committee. Surveys of past and present participants could be used to explore how advisory committees affect participants' sense of trust in the sponsoring agency. Additionally, there are four criteria which may help agencies evaluate whether or not their practices are likely to promote or erode trust. Each of these criteria affect trust in different and important ways and are designed to help agencies identify opportunities for improving trust.

First, does the process give participants the freedom to define issues, question technical experts,

[27] For a good discussion of the importance of process in building trust, see W. Chan Kim and Renée Mauborgne, "Fair

dispute evidence and shape the agenda? This criterion relates to the issue of power. If committee members are given few opportunities to shape or challenge the general direction of a conversation, they are likely to become resentful and distrustful of the agency. This is particularly true if they are members of groups that have had an adversarial relationship with the agency in the past. Although FACA requires that agencies approve agendas, agencies still have a great deal of flexibility with respect to how they run meetings.

Second, do participants feel that the agency is allocating sufficient resources to the committee, including resources for education and preparation on factual and analytical issues? This criterion is particularly relevant in the case of environmental policy when citizen advisory groups are often asked to express their preferences about various scientific or technical alternatives. When agencies consider cutting advisory-committee related expenditures, they must recognize that such changes have the potential to seriously erode participants' trust in the agency. A 1996 audit report issued by the EPA Inspector General recommends cutting back on contract support and "lowering the grade level or reducing the number of personnel involved in committee operations" (EPA 1996, ii). It also recommends "reducing the number of committee meetings, teleconferencing, and holding meetings in government space" (EPA 1996, 7). Such changes could negatively affect participants' trust and should therefore be weighed against the agency's overall goals related to public participation.

Third, are participants dealing with administrative officials who can exercise decision authority or with staff who can only represent those decision makers? This criterion relates to the priority that agencies place on advisory committees. If agencies assign junior staff who lack any decision-making authority to advisory committees, they risk angering committee members who may feel that the agency doesn't take them seriously enough. Agencies should think carefully about how to balance their need to create and maintain trust on committees with personnel and budget constraints.

Fourth, if recommendations were not adopted, does the agency provide an explanation? This

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Process: Managing in the Knowledge Economy," *Harvard Business Review* (July-August 1997): 65-75.

criterion relates to whether the agency holds itself accountable to participants. Inviting people to participate in a public participation process and then rejecting their recommendation without providing an explanation is guaranteed to destroy trust. Currently, FACA does not contain any provisions requiring agencies to issue a formal explanation as to why a recommendation was rejected or ignored. Surveys of committee participants would help to establish how agencies deal with this situation.

Goal 5. Reduce Conflict Among Stakeholders

Public participation can provide a forum for groups with opposing interests to learn about each other's underlying interests and, in the best case scenario, find opportunities for agreement. Because one of the major goals of advisory committees is to provide the sponsoring agency with a recommendation, it is likely that committee members will spend a significant amount of time arguing over conflicting perspectives. Improved relations among the parties may benefit the sponsoring agency by reducing the need for the agency to act as an intermediary between conflicting interests.

The familiarity and cooperation that can arise from advisory committees may resolve future conflict by improving relationships or leading to institutions which can resolve future disputes. One of the major incentives for forming a federal advisory committee is to bring stakeholders into the policy formation process in order to prevent future conflict.

Measuring achievement of this goal entails answering the question: have the relationships between stakeholders improved since the formation of the committee? The answer is not obvious; depending on the internal dynamics of the committee, face-to-face meetings could either reduce or exacerbate existing conflict. Surveys of and interviews with participants could be used to assess a committee's success in reducing conflict. Additionally, one might investigate objective measures, such as the degree to which litigation occurred between parties after the advisory committee's termination or whether committee members created subsequent organizations or agreements for dealing with emerging controversial issues.

Goal 6. Cost-Effectiveness

Even the most ardent public participation advocate is likely to agree with the statement that, "as more emphasis is placed on public participation. . . . less emphasis can be placed on the efficiency of a decision process" (Vari 1995, 107). Like any other government program, advisory committees should be evaluated for their cost-effectiveness. What impact do advisory committees have on the cost of decision-making? Do they lead agencies to delay decisions as they await the findings of committees? Is the input that advisory committees provide worth the expense in both accounting and opportunity costs? Could the input have been obtained through more efficient means?

In order to answer such questions, it is necessary to define the "deliverables" of advisory committees, i.e., what we expect to gain as a result of the committee. As is always the case with any type of benefit-cost analysis, there is a tendency to overemphasize measurable outcomes at the expense of less tangible ones. Efforts must therefore be made to ensure that the outcomes that are most valued—such as those represented by Goals 1 through 5, above—are incorporated into the analysis.

Section 6. Conclusion

Public distrust of government has risen dramatically in recent years. This presents a serious problem for government agencies, particularly those related to public health and the environment. Such agencies already face the challenging task of translating scientific findings into public policy. Public distrust makes this task even more daunting since a distrustful public is more inclined to view regulation with skepticism, regardless of what the science says. In response to this climate of distrust, many recommend that government agencies increase their public participation efforts.

This paper has examined non-expert federal advisory committees, a form of public participation that enables the government to obtain a more in-depth understanding of public concerns and preferences than is available through polling or even focus groups. From the public's perspective, advisory committees provide an opportunity to observe and participate in the articulation of values, preferences and policy alternatives throughout the policy development process.

As discussed throughout the paper, there are several problems associated with advisory committees, as governed by FACA. The first set stems from FACA itself. Although the key elements of FACA were designed to provide public access to advisory committees, the law's procedural requirements and ambiguities have had a detrimental effect on public participation in federal environmental decision-making. The second problem is more political in nature. While the current Administration expresses support for public involvement, it has imposed strict FACA reduction requirements on federal agencies. Encouraging agencies to increase public involvement, while ordering them to reduce their use of advisory committees, poses a dilemma for agencies. The combination of FACA's chilling effects and the lever it provides for trimming the number of advisory committees have had very real effects on how agencies choose to involve the public, as was seen in the discussion of five agency's approaches to site- and region-specific committees.

When confronted with the Administration's reduction requirements, some agencies have been reluctant to reduce their reliance upon advisory committees, indicating that they consider them a worthwhile investment. What is it that agencies gain from advisory committees and how do they evaluate their achievements? The answer to this is by no means obvious. President Clinton's advisory committee on race is a case in point. According to Judith A. Winston, Executive Director of the committee, while "nobody wants to see this fail. . . . there are very few people who can articulate confidently what they think it takes to make it succeed."[28] The evaluation section of this paper provides a broad set of goals and criteria that governmental agencies and private sector entities interested in public involvement may find useful in defining their goals and

[28]Stephen A. Holmes and James Bennet, "Renewed Sense of Purpose for Clinton Panel on Race" *New York Times,*

evaluating their accomplishments.

While the evaluation of federal advisory committees suggests ample opportunities for education, improved decision-making, trust formation, and conflict resolution, there are some large qualifications to this assessment. First, most of these goals are much more likely to be met within the committee than among the wider public outside of it. Unless explicit attention is given to improving access of this wider public to the activities of the committee and sharing (and publicizing) committee outputs, the "goals" of public participation are likely to be met only among a narrow group.

Second, even if outreach efforts are significant, most of the substantive benefits accruing from participation through advisory committees will be related to the participants themselves. By and large, they will be the ones who are most educated, for whom trust is created or destroyed, and for whom conflict will be resolved. They are the ones whose values (or the values they represent) are most likely to get incorporated into decisions, and they are the ones who will be generating policy alternatives.

This reality suggests that it is important to look at what type of "participation" advisory committees represent. As was suggested in Sections 2 and 3, the realities of FACA—its procedural barriers to "bottom up" participation, "FACA-phobia," and the lever it provides for limiting the proliferation of committees—means that advisory committees are most likely to be formed, and may work best, on national decisions "inside the beltway." It is in this type of high level decision-making that there is the time, resources, and political will, to leap over the many hurdles FACA creates. A preliminary list of "favorable conditions" for advisory committee formation and success, may be as follows:

- The problem is *significant enough* that stakeholders are willing to spend the time and political capital required to form a committee and get it chartered;
- The problem is *contentious enough* to justify resolving it through an advisory committee, but not so contentious that stakeholders can not envision resolution;

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14 January 1998, p.A1.

- The problem is *long-term* and will outlast the often long process for forming a FACA-sanctioned advisory committee;
- There is sufficient *political will* among relevant agencies to overcome administrative limits on the number of advisory committees and to overcome FACA-phobia;
- There are clearly *defined interests* and a manageable number of interest groups which can compose a "balanced" committee;
- Educating and developing public trust among the *wider public* is less important than resolving disputes among interest groups.

Many of these favorable conditions suggest that FACA-sanctioned advisory committees are more likely to represent traditional pluralist decision-making—with interest groups vying for position—than a popular democratic model akin, for example, to the New England town meeting. In a sense, FACA enshrined this pluralist model in advisory committees. Scope provisions prevent undue influence. Balance provisions ensure that all interests are involved and well defined. And transparency provisions ensure public oversight. These requirements are highly appropriate in national decision-making, but can run afoul of bottom-up, more popular forms of democracy, where interests are less well defined, conflicts-of-interest are more likely, and ad hoc participatory efforts can not often survive the procedural rigors of FACA.

Many believe that the best way to resolve the problems associated with FACA and public participation would be to allow more forms of public involvement to be exempt from FACA. This would circumvent the challenge of chartering a new advisory committee, reduce uncertainty about whether FACA applies, and enable agencies to continue their public involvement efforts. Currently, agencies seeking to establish regulatory negotiation advisory committees are exempt from Executive Order 12838 and OMB Circular A-135, giving agencies a new incentive to utilize regulatory negotiation committees when they otherwise might not (Croley 1996, 122). In addition, Provision 204 of the Unfunded Mandates Reform Act of 1995 exempts meetings with state, local, and tribal officials for the purpose of exchanging views, information, or advice relating to shared responsibilities.

The discussion of exemptions, however, has not adequately addressed the impacts of FACA on site- and region-specific participation. In order to do so, exemptions would have to be granted for more local, ad hoc, and informal groups. To the extent that these groups continue to be subject to FACA, the barriers created by procedural requirements and the presence of "FACA-phobia" will either prevent more participatory processes from taking place or reduce participation to a cursory, procedural exercise. The end result is likely to be the continuing erosion of trust in government and missed opportunities for improving decisions and resolving controversies.

In the most recent annual report on advisory committees, the President seems to have acknowledged these problems and expressed an interest in helping agencies make use of alternative mechanisms for involving the public:

> Building upon my Administration's commitment to expand access to Federal decisionmakers, managers at all levels will be provided with more timely guidance that includes enhanced options for achieving objectives, better training, and exposure to a variety of tools and techniques, which when used in conjunction with advisory committees, offer additional flexibility to address a wide variety of public participation needs."[29]

In addition, the report expresses the Administration's desire to assist agencies in the interagency coordination of ecosystem management efforts, an area in which FACA is often cited as an obstacle. These statements suggest that the Administration is aware of some of the problems related to FACA, as well as its own policies, and is working to address them.

There are many interesting, yet unanswered questions related to advisory committees and public participation in general. In particular, research is needed to get a more quantitative understanding of some of the more difficult issues raised by this paper, particularly how much and what kind of participation is never undertaken because of FACA's chilling effects and the administrative limits on committees? More research is also needed on the effects of existing committees on policy. What is the relationship between advisory committee recommendations and subsequent policy decisions? What percentage of recommendations are incorporated into

[29]U.S. President, written statement to Congress in "Twenty-Fifth Annual Report of the President on Federal Advisory Committees," General Services Administration, 1997.

policy? What interests have the greatest representation on advisory committees and why do they participate? How do different agencies cope with FACA's ambiguity? More generally, what public involvement mechanisms are most appropriate when dealing with interagency policy issues, such as ecosystem management? These are only a few of the challenging questions that are worth pursuing to ensure that public participation mechanisms, such as advisory committees, are utilized and managed most effectively.

APPENDIX A

Total Federal Advisory Committees, 1985-1990						
Category	**1985**	**1986**	**1987**	**1988**	**1989**	**1990**
Committees	926	901	937	956	978	1071
Meetings	3914	3519	3430	3516	3474	3774
Percentage open to the public	52%	48%	47%	50%	52%	50%
Reports	720	666	695	996	1079	972
Members	23,381	24,600	19,837	21,236	22,960	22,391
Real cost (in millions)	$109.84	$114.79	$105.83	$119.50	$120.99	$13141
Nominal cost (in millions)	$ 77.55	$82.58	$78.94	$92.63	$98.37	$112.31

Total Federal Advisory Committees, 1991-1995					
Category	**1991**	**1992**	**1993**	**1994**	**1995**
Committees	1115	1141	1088	1007	948
Meetings	4198	4645	4387	4109	5179
Percentage open to the public	49%	46%	49%	44%	47%
Reports	1035	1241	1141	1245	1023
Members	27,580	29,020	28,317	29,766	30,446
Real cost (in millions)	$148.46	$158.87	$151.11	$137.13	$157.03
Nominal cost (in millions)	$132.55	$146.26	$143.91	$133.39	$157.03

Total Federal Advisory Committees, 1996-1997		
Category	**1996**	**1997**
Committees	900	963
Meetings	5008	5698
Percentage open to the public	44%	42%
Reports	1060	1101
Members	29,511	36,586
Real cost (in millions)	$144.26	$169.05
Nominal cost (in millions)	$148.52	$178.03

Source: General Services Administration, Annual Report of the President on Federal Advisory Committees, FY 1985 - FY 1997

APPENDIX B

EPA Federal Advisory Committees, 1985-1990						
Category	**1985**	**1986**	**1987**	**1988**	**1989**	**1990**
Committees	7	10	7	9	11	13
Total Meetings	99	90	95	78	93	127
Percentage open to the public	95%	98%	98%	96%	98%	99%
Reports	59	65	58	76	61	41
Members	206	220	238	187	194	222
Real cost (in millions)	$2.14	$2.17	$2.45	$2.13	$2.55	$2.98
Nominal cost (in millions)	$1.51	$1.56	$1.83	$1.65	$2.07	$2.54

EPA Federal Advisory Committees, 1991-1995					
Category	**1991**	**1992**	**1993**	**1994**	**1995**
Committees	19	21	25	22	23
Total Meetings	120	124	148	147	312
Percentage open to the public	99%	99%	99%	99%	99%
Reports	40	82	71	60	69
Members	559	589	823	1366	1445
Real cost (in millions)	$4.34	$5.34	$5.10	$5.84	$9.46
Nominal cost (in millions)	$3.88	$4.91	$4.85	$5.68	$9.46

EPA Federal Advisory Committees, 1996-1997		
Category	**1996**	**1997**
Committees	24	27
Total Meetings	226	181
Percentage open to the public	100%	99%
Reports	82	139
Members	1515	1564
Real cost (in millions)	$10.63	$15.65
Nominal cost (in millions)	$10.94	$16.48

Source: General Services Administration, Annual Report of the President on Federal Advisory Committees, FY 1985 - FY 1997

APPENDIX C

DOE Federal Advisory Committees, 1985-1990						
Category	**1985**	**1986**	**1987**	**1988**	**1989**	**1990**
Committees	13	11	11	12	14	13
Total Meetings	32	30	31	47	49	53
Percentage open to the public	100%	100%	100%	100%	98%	94%
Reports	18	14	14	21	25	32
Members	425	487	463	490	446	563
Real cost (in millions)	$1.22	$1.22	$1.28	$1.48	$2.83	$3.23
Nominal cost (in millions)	$0.86	$0.88	$0.96	$1.14	$2.30	$2.76

DOE Federal Advisory Committees, 1991-1995					
Category	**1991**	**1992**	**1993**	**1994**	**1995**
Committees	20	25	17	21	21
Total Meetings	39	49	40	59	141
Percentage open to the public	90%	100%	93%	95%	99%
Reports	24	16	24	22	94
Members	546	613	645	719	789
Real cost (in millions)	$4.35	$2.77	$4.87	$6.55	$12.26
Nominal cost (in millions)	$3.89	$2.55	$4.64	$6.37	$12.26

DOE Federal Advisory Committees, 1996-1997		
Category	**1996**	**1997**
Committees	19	22
Total Meetings	200	140
Percentage open to the public	99%	100%
Reports	129	139
Members	868	808
Real cost (in millions)	$6.75	$6.67
Nominal cost (in millions)	$6.95	$7.02

Source: General Services Administration, Annual Report of the President on Federal Advisory Committees, FY 1985 - FY 1997

APPENDIX D

DOI Federal Advisory Committees, 1985-1990						
Category	**1985**	**1986**	**1987**	**1988**	**1989**	**1990**
Committees	145	147	153	155	147	146
Total Meetings	361	265	270	263	283	270
Percentage open to the public	99%	100%	100%	100%	100%	99.6%
Reports	16	36	30	8	80	29
Members	1960	2010	1574	1697	1801	1761
Real cost (in millions)	$6.15	$6.66	$3.54	$3.15	$3.15	$3.79
Nominal cost (in millions)	$4.34	$4.79	$2.64	$2.45	$2.56	$3.24

DOI Federal Advisory Committees, 1991-1995					
Category	**1991**	**1992**	**1993**	**1994**	**1995**
Committees	164	161	186	181	112
Total Meetings	307	347	339	173	195
Percentage open to the public	100%	99%	100%	99%	100%
Reports	56	31	38	77	50
Members	1893	1609	1779	1779	1076
Real cost (in millions)	$4.74	$5.13	$3.21	$1.99	$3.33
Nominal cost (in millions)	$4.23	$4.72	$3.06	$1.94	$3.33

DOI Federal Advisory Committees, 1991-1995		
Category	**1996**	**1997**
Committees	107	110
Total Meetings	353	308
Percentage open to the public	100%	100%
Reports	103	61
Members	1349	1,428
Real cost (in millions)	$5.50	$5.47
Nominal cost (in millions)	$5.66	$5.76

Source: General Services Administration, Annual Report of the President on Federal Advisory Committees, FY 1985 - FY 1997

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Public Participation in Environmental Decisions: An Evaluative Framework Using Social Goals

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DRAFT

Thomas C. Beierle
Center for Risk Management
Resources For the Future
1616 P Street
Washington, DC 20036

INTRODUCTION

Public managers are continually faced with the challenge of making high quality decisions while remaining responsive to the citizens those decisions affect. Meeting the challenge in the environmental policy arena poses particular problems because issues are often technically complex and value-laden, and multiple interests operate in an atmosphere of conflict and mistrust. A legacy of gridlock has widely discredited the "decide, announce, defend" approach to environmental decision-making in which agencies confront the public only after determining a course of action. At the same time, experience with public participation[1] fails to support the position that involving the public is an unmitigated good and that more of it is always better. Federal, state, and local governments are increasingly seeking better ways to fulfill their regulatory mandates while constructively engaging the public in environmental decision-making. This paper presents a framework for evaluating the success of such public participation programs and for comparing the results of a variety of different mechanisms for involving the public.

A number of research findings and policy trends have signaled the importance of improving public involvement in environmental decision-making. Gridlock over issues of chemical and nuclear risk have shown that experts and the lay public view risks differently (Krimsky and Golding, 1992). Recent national research reports have discussed at length the subjectivity of even the most technical tools of environmental decision-making—risk assessment and cost-benefit analysis (NRC, 1996; PCRARM 1997). Policy initiatives aimed at regulatory flexibility, such as EPA's Project XL, have underlined the need to introduce social values into deliberations when making trade-offs

[1] "Public participation" and "public involvement" are used interchangeably. Unlike the term "stakeholder involvement" they do not necessarily imply that participants represent discrete constituencies.

among risks which are difficult to compare using standard decision tools (reducing cancer risk from airborne toxics versus conserving fresh waster, for example). Reflecting increased attention to the importance of the public's role in environmental decision-making, the National Research Council (NRC) recently concluded that public involvement "is critical to ensure that all relevant information is included, that it is synthesized in a way that addresses parties' concerns, and that those who may be affected by a risk decision are sufficiently well informed and involved to participate meaningfully in the decision" (NRC, 1996). Yet the participatory methods institutionalized in environmental law, such as formal comments, public hearings, and citizen suits, have proved inadequate to effectively meet the challenge of constructively involving the public.

Recent efforts at many levels of government show a commitment to moving beyond formulaic approaches to public involvement. The Environmental Protection Agency, Department of Energy, and Department of Defense have initiated over 200 citizen advisory groups at contaminated sites around the country (FFER, 1996); a number of states have incorporated public involvement into comparative risk efforts (Perhac, 1997; WCED, 1997); and public advisory groups have become important components of EPA's environmental justice activities, place-based decision-making efforts, and reinvention programs (Davies and Mazurek, 1998; Mlay, 1996; NEJAC, 1996; NAPA, 1997).

Despite the resurgence of interest in public participation, no consistent method has emerged for evaluating the success of individual processes or the desirability of the many participatory methods. One reason is a lack of consensus on what public participation is supposed to accomplish. Are participatory programs intended to empower disenfranchised groups or to make it easier for government agencies to implement their programs? Is a program successful if it simply involves more of the public, or should it have to result in demonstrably better decisions?

A second, and perhaps more intractable, barrier to consistent evaluation arises from fundamental differences of opinion on the nature of democracy. Most people would not dispute that, in a democracy, citizens have a right to participate in the decisions which affect them. However there are wide-ranging views on what form that participation should take. A *managerial* perspective entrusts elected representatives and their appointed administrators with identifying and pursuing the common good (Laird 1993: 343). While knowledge of public preferences is vital to a managerial approach, the direct involvement of the public in decision-making is seens as a threat to the common good because it opens the door to self-interested strategic behavior. A *pluralist* perspective views government, not as a manager of the public will, but as an arbitrator among various organized interest groups. In pluralism, there is no objective "common good" but a relative common good arising out of the free deliberation and negotiation among organized interest groups (Williams and Matheny 1995). The *popular* perspective calls for the direct participation of citizens, rather than their representatives, in making policy. Popular democratic theory stresses the importance of direct participation in instilling values in citizens and strengthening the body politic.

Each perspective favors a different form of participation. The managerial perspective may favor a survey while the pluralist perspective favors a stakeholder mediation, and the popular perspective favors a citizen advisory group. Given these divergent models of the proper role of citizens in decision-making, it is not surprising that the state of evaluation still resembles one researcher's 1983 description: "the participation concept is complex and value laden; there are no widely held criteria for judging success and failure; there are no agreed-upon evaluation methods; and there are few reliable measurement tools" (Rosener 1983: 45).

The framework described in this paper is a response to the need to evaluate public participation programs. It is designed with three objectives in mind: 1) to identify the strengths and weaknesses of a number of different participatory mechanisms—including those favored by managerial, pluralist, or popular perspectives; 2) to be "objective" in the

sense of not taking the perspective of any one party to a decision; and 3) to measure, to the extent feasible, tangible outcomes. There is little doubt as to the usefulness of such an evaluative framework. It can determine whether participatory programs are working, how they can be improved, which mechanisms work best for particular needs, and, ultimately, whether participatory programs justify the commitment of public and private resources.

In order to arrive at evaluative criteria that meet the three objectives, its is important to return to one of the core tasks of program evaluation: identifying the set of goals that a program is intended to achieve. Policy evaluation typically measures the impact and efficiency of an intervention in ameliorating the societal problems at which it is directed. This can be relatively straightforward when evaluating, for example, the success of after-school programs in reducing neighborhood juvenile crime or the effectiveness of prison job training programs in reducing recidivism. But what is the problem (or problems) public participation programs are meant to fix?

We start with the premise that the environmental regulatory system has a number of systemic ailments to which public participation may provide at least a partial cure. The problems are well known: the public lacks basic knowledge about many environmental issues; policymakers inadequately consider public values and preferences; opportunities to correct mistakes or find innovative solutions go unexplored; the public mistrusts agencies' resolve to protect health and the environment; and, a culture of conflict prevails. Six "social" goals emerge from this problem assessment and form the basis of this paper's evaluative framework. The goals are:

- Educating and informing the public,
- Incorporating public values into decision-making,
- Improving the substantive quality of decisions,
- Increasing trust in institutions,
- Reducing conflict, and
- Achieving cost-effectiveness.

Section 1 describes this social goals framework in detail. It presents the goals and justifies their inclusion. The section ends with a brief illustration of how the framework can be used to analyze public participation in clean-up decisions at California's Fort Ord military base in California.

One of the enduring characteristics of public participation and its evaluation is the absence of obvious answers to even the most basic questions. In fact, researchers, practitioners, and participants give a number of different implicit or explicit answers to the question posed above: what problem (or problems) is public participation supposed to fix? Different answers to this question lead to different approaches to evaluation. Section 2 looks at two of these alternative approaches. In the first, a generalized lack of democracy in environmental decision-making is the problem. Related evaluations focus mainly on the process, rather than outcomes, of participation. In the second approach, barriers which hamper the fulfillment of a particular group's objectives are the problem. Related evaluations focus on the specific goals of one or several stakeholders. The section presents a comparison of the advantages and disadvantages of these approaches with those of our framework.

While the first three sections of the paper discuss public participation as a concept, Section 3 addresses it in practice. The real world has only a limited number of formalized mechanisms to foster participation. This section describes a number of them and asks which are most likely to achieve each of the six social goals. The mechanisms discussed include:

- traditional participatory mechanisms, such as public hearings, public comments, and advisory committees;
- one-way flows of information such as surveys, focus groups, and public education;
- mechanisms associated with collaborative decision-making and conflict resolution, such as mediation and regulatory negotiation; and,
- innovative forms of public deliberation, such as citizen juries and consensus conferences.

The section identifies four characteristics that define and distinguish these mechanisms: their pattern of information flows, how they represent the public, the public's decision-making role, and the number of potentially opposing interests involved. By tying these characteristics to the goals of interest, the section identifies what various public involvement mechanisms ought to be expected to accomplish.

Section 4 concludes the paper with a summary of the social goals framework and its implications. It suggests areas for further research to test many of the assumptions built into the framework, to clarify the relationship between the process of participation and its outcomes, and to investigate how different types of environmental issues may require different approaches to participation.

1. EVALUATING PUBLIC PARTICIPATION USING SOCIAL GOALS

The framework presented in this section evaluates the outcomes of participatory processes, but it takes a broader view of outcomes than is typical. Normally, the "outcome" of a decision-making process refers to its substantive decisions, conclusions, or recommendations—such as whether an incinerator should be built, what environmental problems should receive priority attention, or what emergency response system should be established at an industrial facility. These substantive outcomes can be evaluated (and even compared with comparable non-participatory decision processes) using a variety of criteria, including stakeholder satisfaction with the result, cost-effectiveness, or risk minimization. But narrowly interpreting "outcome" to refer only to substantive decisions misses some of the most important results of participatory processes—and indeed those which justify opening up decision processes to the public in the first place. A more expansive interpretation of outcomes, and that used in this paper, includes the extent to which a participatory process has achieved a set of "social goals."

Social goals are those goals which public participation ought to be expected to achieve but which transcend the immediate interests of parties involved in a decision. The benefits of achieving these goals spill over from the participants themselves to the regulatory system as a whole. How well they are achieved often depends as much on how participants feel about the decision-making process as by the substantive decisions made during it.

The first social goal deals with participation's educational function—its effectiveness at providing the public with sufficient knowledge to participate in decision-making and to become active partners in a functioning regulatory system. The next two goals turn the educational table around and address how well public participation informs agencies about public values, preferences, and substantive knowledge. The following two goals address the Herculean tasks of restoring trust in regulatory institutions and reducing conflict among stakeholders. The final goal is the cost-effectiveness of the decision-making process (rather than the result of that process). It recognizes the importance of choosing the right approach—or no approach at all—to public participation. Each of the six goals are discussed in subsections that follow. The section concludes by showing how the framework can be used to analyze the Fort Ord Restoration Advisory Board, a public advisory committee established to help make clean-up decisions at the Fort Ord army base in California.

Goal 1: Inform and Educate the Public

Public education is increasingly important to a well-functioning environmental regulatory system. Knowledge about environmental issues allows the public to carry out the role envisioned in major environmental legislation of identifying violations, applying community pressure, enforcing laws, and contributing to permitting and rulemaking. Programs such as the Toxic Release Inventory and other right-to-know initiatives continue this tradition of utilizing the public as a regulatory resource. Because it is a precursor to behavioral change, education plays an increasingly important role as the

effects of transportation, contaminated run-off, and energy use—all issues in which the collective effects of individual decisions are crucial—become environmental priorities. Finally, education ensures that the technical complexity of issues does not hamper the public's ability to participate in decision-making.

Although a large cadre of well-informed environmental citizens might fulfill a Jeffersonian ideal of public participation, such a vision is clearly not realistic. Instead, we can differentiate between what the actively involved public and the wider affected public might reasonably be expected to know. Ideally, the active public would gain sufficient knowledge to enable them to deliberate issues and formulate alternatives with government representatives and experts. This does not mean that they should simply be supplied with the information that supports agencies' decisions. Information is not neutral, and disagreement on facts and their interpretation are valid. There may also be considerable disagreement on the relevance of different types of knowledge to a decision-making process. Often, members of the public will contest information because they distrust its source. These complications add tremendously to the knowledge that the participating public might ideally possess. In the best of situations, all of the active public would understand the relevant technical and economic issues (including their inherent uncertainties), the tradeoffs involved in various outcomes, and the interests of other stakeholders.

The knowledge requirements for the active public are clearly too ambitious for more than a handful of citizens. But the wider public ought to know enough about relevant issues so that, if called on to decide an issue or offer an opinion, they would have a realistic understanding of the consequences of their choice. Yet evidence suggests that even this moderate requirement is ambitious. In Roper's most recent "National Report Card" on environmental attitudes and knowledge, nearly two-thirds of Americans received a failing grade on basic questions about the environment (NEETF, 1997). Perhaps more importantly, respondents consistently chose the same wrong answer to some questions. A majority attributed, for example, the principal cause of U.S. water pollution to factories

(rather than run-off) and cited hydroelectricity (rather than fossil fuels) as the main source of electricity in the U.S. This misinformation clearly affects how well the public controls its own contribution to water and air pollution. Misinformation also hampers the public's ability to apply pressure to other polluters or contribute to public decision-making when the opportunity arises.

In order to assess achievement of the goal, questions of quantity and quality are important. How many members of the public were actively involved in participatory fora or took advantage of information and access provided to them? What percentage of the wider public was reached through education campaigns, media relations, or interaction with more active participants? Did the active public feel that they had sufficient knowledge to contribute to deliberations and decision-making? Did members of the public understand their role in the participatory process? Was there sufficient time and money available to obtain credible, relevant and, if necessary, independent information?

Goal 2: Incorporate Public Values, Assumptions, and Preferences into Decision-making

While the first goal focused on educating the public, this goal and the next focus on educating public agencies. The risk perception and communication literature contains numerous examples of the differences between public and expert perception of risk (Krimsky and Golding, 1992). In a much noted example, a 1987 study by EPA's Science Advisory Board on ranking environmental risks assigned priority to various environmental issues that were nearly opposite the ranking the public reported in opinion polls (Davies and Mazurek, 1998). Even the most technical aspects of environmental policy analysis—risk assessment and cost-benefit analysis—require often unacknowledged value judgements (NRC, 1996).[2] Discussions of the validity of public

[2] A short list of "technical" decisions on which public values might ideally come to bear include the protection accorded future generations through discounting, the weight given to children's health as opposed to that of adults in aggregating risks, or the importance of cancer rather than non-cancer effects in identifying health endpoints to be researched.

and expert perceptions of risk for guiding policy are beyond the scope of this paper.[3] However, differences over values, assumptions and preferences need to be discussed in a process that fosters mutual education and, ideally, results in their incorporation into analyses and decisions. In order to give the widest range to discussions about values, assumptions, and preferences, all of the affected stakeholders should be included in the process.

Relevant questions for measuring the goal include the impact of public input and the scope of the public represented. Was information from the public participation process used to inform or review analyses or decisions? Did the public feel that it had an impact on decisions? Where public input was not incorporated into analyses or decisions, did the relevant agency provide justification which was acceptable to the public? Were all reasonably affected parties included or represented, particularly those with no formal organization? Did participants reflect the larger "public" they were expected to represent, for example, in terms of socioeconomic criteria? Were there mechanisms to hold participants accountable to the community which they represented?

Goal 3: Increase the Substantive Quality of Decisions

Not only is the public a source of values, assumptions, and preferences, but a source of facts and innovative alternatives. This goal relies less on the normative argument of Goal 2 and more on the substantive argument that public input can make decisions more technically rigorous and satisfying to a wider range of interests. This goal stops short of defining efficiency or equity criteria for what constitutes a "better" decision. In most cases, it is simply impossible to calculate costs and benefits against a baseline, figure out whether participants have "expanded the pie," or come up with an objective decision

[3] For a discussion of the normative issues surrounding lay and expert risk perception as guides for policy, see Perhac (1996).

about who ought to get what.[4] Instead, we have to settle for evidence that the public participation process added useful substantive knowledge or ideas that would not have been available otherwise. These might include identifying relevant factual information, identifying mistakes, or generating alternatives which satisfy a wider range of interests.

Relevant questions concern evidence that decisions were "better" in terms of participant satisfaction and in terms of generating new information. Did the public involvement process clearly increase all parties' satisfaction with the outcome relative to the likely non-participatory outcome? Were new alternatives generated? Were new opportunities for trade-offs or compensation between parties identified? Were relevant new facts revealed that corrected or otherwise clearly improved the technical analysis? Were decisions technically, financially, or otherwise achievable?

Goal 4: Foster Trust in Institutions

The percentage of Americans reporting that they trust the government has dropped by roughly half from the time of the Kennedy Administration to today (PRC, 1998). Parallel declines in party identification, voter turnout, and confidence in institutional leadership signal what has been described as a "decline of deference" to society's authoritative institutions (Laird, 1989). The precipitous drop in trust and deference may represent a healthy public skepticism in the wake of scandals and mismanagement by these same authoritative institutions. However, it is also symptomatic of what some claim to be a general decline in the norms of civil society (Putnam, 1995). As "social capital" decreases, the ability to resolve environmental issues is seriously circumscribed.

Three characteristics of many environmental issues—the long time horizon to realize benefits and costs, the absence of clear feedback on the success of management efforts,

[4] For some participatory mechanisms, such evidence may emerge from the decision itself. In mediations or regulatory negotiations, for example, participants would not be expected to join the process or agree on a resolution unless it was superior to what they would have achieved through a less participatory method. In

and the diffuse nature of benefits—make agency trustworthiness particularly important (DOE 1993: 19). A number of analyses of public trust suggest that it is far easier to lose than to regain. However, one of the most effective ways to regain public trust may be to involve and empower the public in decision making (Slovic 1993; Schneider, et. al. 1997).

Trust may be the most difficult goal to measure, partly because it is difficult to define. In some cases, changes in the level of trust may be reported. Often however, indicators of trust have to be imputed from its two components: competence (i.e., the ability to do what is "right") and fiduciary duty (i.e., the will to do what is "right") (DOE 1993: 12). Evidence that the public feels that an agency is capable of, and obliged to, serve the public interest (however defined) can serve as a proxy for trust. Does the public have confidence in the agency's technical abilities? Does the public feel that its interests are the same as the agency's interests, or at least valued by the agency? Would the agency be willing to turn over decision-making authority? Would the public let the agency undertake a similar decision-making process with less public oversight?

Goal 5: Reduce Conflict Among Stakeholders

Goal 5 arises from a consensual theory of society: public participation ought to be a process of identifying shared norms and values rather than a lever for exercising the will of one set of stakeholders. Adopting this perspective, however, leaves room for the belief that opportunities for consensus on a particular issue may be quite limited. Where decisions are reached, they should be realistic enough to be implementable. Even if parties can not resolve a particular issue, the process ought to help participants understand the goals and perspective of others by fostering communication and building relationships. Ideally, relationships (and decisions, if made) would remain stable over

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these cases, an implementable agreement may be sufficient evidence of achieving the substantive quality goal.

time, reflecting an ongoing absence of conflict or agreed-upon mechanisms for resolving emergent differences (Susskind and Cruikshank 1987).

In some cases, there are direct measures of conflict reduction: Did public involvement reduce political or public opposition to the decision as reflected in testimony at public hearings, letters and op-eds in relevant news sources, the level of activism, or political debate? Did it lead to less litigation than a reasonable norm or baseline? If an agreement was reached, was it stable over a reasonable period of time? Were there mechanisms for re-negotiation and discussion as information and situations changed? Concerning relationships with a public agency, did public involvement improve the image of the agency (perceptions of trust, competence etc.) in such a way that future issues may be easier to deal with? Concerning relationships between other stakeholders: Did public involvement improve or worsen communication and/or cooperation among interested parties during and after the process?

Goal 6: Cost-effectiveness

Certainly not every environmental decision justifies an active public participation program. Few can support as extensive a process as many observers would like. The goal of cost-effectiveness addresses the appropriate use and scope of public participation mechanisms. It does not refer to the cost-effectiveness of decisions made in participatory processes, but to the cost-effectiveness of choosing among the different participatory or non-participatory approaches to decision-making.

The goal of cost-effectiveness can be considered the goal which constrains the achievement of the first five goals: was the public participation mechanism the most cost-effective way (in terms of money, time, risk, and opportunity cost) of achieving the benefits (in terms of Goals 1 though 5) relative to other mechanisms which reasonably could have been expected to achieve the same results? Was an advisory committee used when a public hearing would have been sufficient? Was a citizen jury convened when

public education would have achieved the same goals? The goal argues that public participation programs must earn their keep by producing results—such as education, trust, and conflict reduction—which justify the added effort.

The most important step in determining cost-effectiveness is the evaluation of the first five goals, as these define "effectiveness" in our framework. The evaluation is then supported by questions of valuation: How much did the public involvement process cost all participants in terms of time and money? What were the opportunity costs for all participants in terms of shifted resources and delayed action? What costs did the process help avoid?

Evaluating the Fort Ord Restoration Advisory Board

A recent example of public participation at California's Fort Ord Army Base illustrates how this framework can be used in practice. The Department of Defense (DOD) recently established Restoration Advisory Boards (RABs) to assist with decisions about environmental clean-up at all of its closing, and some of its operating, installations (FFER 1996:48). DOD intended the boards to be composed of "diverse interests within the local community" as well as, in the Fort Ord case, representatives of a variety of federal and state agencies. They would meet frequently and, through deliberation on clean-up decisions, educate the public and seek consensus on site decisions. In spite of these goals, controversy has wracked California's Fort Ord RAB since its inception. Rather than a forum for tackling the large number of substantive decisions that needed resolution, it became, in the words of a Fort Ord official, "a forum for the activist community to say [its] piece" (Inside EPA 1998:19). Conflict over minor procedural issues and bylaws paralyzed the process in spite of DOD's efforts to address these problems by bringing in outside facilitators. As a result of the persistent problems, EPA hired consultants who ultimately recommended the dissolution of the RAB. To avoid the further ire of community activists, DOD and the Army decided to retain the Fort Ord RAB but to seek community input through alternate means.

The Fort Ord RAB has become somewhat notorious for its level of contention, and it is clearly not representative of the vast majority of RABs operating at other bases.[5] However, the board's recognized dysfunction provides a stark opportunity to ask the question: On what basis can we judge its success or failure?

But for a few substantive contributions to cleanup decisions, the grades on our evaluative goals are mostly failing. In spite of workshops intended to educate RAB members, most reported not being confident in their understanding of the issues, had difficulty digesting relevant documents, could not keep up with technical RAB members, and questioned their ability to provide meaningful input (Szasz and Meuser, 1995; Wernstedt and Hersh, 1997). Perhaps more importantly, members were confused about the purpose of the RAB and whether its decisions were binding on the Army (Siegel and Houghton, 1997a). Little information appears to have made it out of the RAB to the wider public. RAB members reported that their communication with community members outside the group was non-existent or, at best, haphazard (Szasz and Meuser, 1995:12). Although RAB meetings were open to the wider public, active participation was limited to questions at the beginning of the meeting (Wernstedt and Hersh, 1997).

Procedural paralysis of the RAB prevented much substantive contribution to decision-making. In one case, however, RAB input caused the Army to include sewage outflows located on the beach in a surface and storm water study rather than designating them a "no action site" (Wernsted and Hersh, 1997). Fort Ord also gets a modest grade for involving a range of affected interests. Membership in the RAB included interests from federal, state, and local agencies, conservation and environmental groups, environmental justice advocates, and local political interests (Wernsted and Hersh, 1997). However, some members of the RAB charged that it under-represented Latino, African-American, and Asian populations in surrounding communities.

[5] Robert Hersh, personal communication (March 9, 1998).

The RAB performed decidedly worse on trust and conflict. Siegel and Houghton (1997a) reported that an "ongoing lack of trust among community RAB members themselves and between some citizen members and the Army" was a chronic problem. Rather than resolving conflict, the RAB was a forum for amplifying it, earning it a "national reputation for contentiousness" (Siegel and Houghton, 1997a). The lack of trust and conflict contributed to the RAB's attrition rate. Some agency representatives on the board stopped attending because the RAB was becoming a "political committee" that wouldn't fulfill its task to address cleanup issues. Half of the original public members of the RAB dropped out before their terms had expired. If mistrust and conflict had such an impact inside the RAB, one could surmise that it did little to alleviate these problems among the wider community.

Finally, the determination of cost-effectiveness depends on how one values the RAB's achievements. When we weigh its moderate substantive input against lost ground on most other important goals, the gains from the process appear slight. It clearly increased mistrust and conflict, making opportunities for education and substantive community contribution more difficult in the future. With a deficit on the benefits side of the balance sheet, we can easily postulate that a less resource-intensive method of public participation (or no participation at all) could have arrived at better outcomes. Table 1 summarizes the results of the Fort Ord Evaluation.

Table 1: Summary of Fort Ord Evaluation

Goal	Result
Inform and educate the public	Little education of active or wider public on substantive issue or participatory process
Incorporate public values, assumptions, and preferences into decision-making	Some evidence of impact of public preferences on decisions (sewage outflows) and moderate success in including representative stakeholders.
Increase the substantive quality of decisions	Few substantive issues addressed by RAB.
Foster trust in institutions	Mistrust among public participants and between the public and government was likely augmented by the process.
Reduce conflict among stakeholders	Process likely increased conflict.
Cost-effectiveness	Given the poor performance on Goals 1 though 5, another process—or no process at all—may have been equally effective.

Conclusion

The evaluative framework presented here fulfills the three requirements outlined in the paper's introduction. It is flexible enough to apply to a wide range of mechanisms. It is objective in the sense of addressing the concerns of "society" rather than those of any specific interest. And, it measures the tangible outcomes related to our social goals. But it is only one possible approach to evaluating public participation. The next section turns to two other possible approaches and discusses how their advantages and disadvantages compare with the framework we have presented here.

SECTION 2. ALTERNATIVE APPROACHES TO EVALUATION

The introduction to this paper asserted that the principal question regarding the evaluation of public participation concerned problem formulation: what is the societal problem (or

problems) public participation programs are meant to fix? It suggested that different answers to that question would lead to different approaches to evaluation. The framework presented in Section 2 answered the question by identifying a number of systemic problems plaguing environmental policy. As the introduction noted, however, many different kinds of answers—and therefore different approaches to evaluation—are possible. This section looks at two different alternatives: what we will call process evaluations and interest-based evaluations.

Process Evaluations

One possible set of answers to the problem formulation question shares the common theme that environmental decision-making is insufficiently democratic: un-elected administrators dominate the policy-making process, legislators pander to special interests, and public agencies lack accountability to the people they are intended to serve. These criticisms often emanate from a desire for a more popular, rather than representative or pluralist, democracy. They take for granted the benefits of more public involvement, and leave evaluators the task of judging how well actual decision-making processes match a participatory ideal.

The evaluations typically don't examine what participation accomplishes, but what it looks like. Were participants representative? Was the membership balanced? Did participation occur early in the process? Were there face-to-face discussions between the public and agency representatives? Was the agency committed to the participatory process and responsive to public input?[6] In an evaluation of U.S. Forest Service land management, for example, Blahna and Yonts-Shepard (1989) evaluated programs using

[6] These and many other criteria for what constitute good processes have been derived from theory (Webler, 1995; Fiorino, 1990: 229-230) or "rules of thumb" which practitioners and researchers have found to be consistently successful over time (Ashford, 1984:79; Crosby, 1986:171; Blahna and Yonts-Shepard, 1989:211-213; Peelle, 1996). Additional criteria on which a rough consensus has emerged include: clarity of goals and roles of participants; sufficient resources, including financial support, time, and information; recognition of the legitimacy of public input equal to that of officials and technical experts; procedural

these five questions. Crosby, et. al. (1986) used a similar approach to evaluate a citizen's panel on agriculture and water quality in Minnesota. Although a process approach is appealing, and suggests that an evaluator need only a complete checklist, we note three difficulties below.

The first difficulty arises from the implicit assumption that good processes lead to good outcomes. Clearly, process-related issues are important to the kinds of goals outlined in Section 1. Indeed, the literature on procedural justice suggests that fair processes are likely to have an equal or greater impact on the level of participant satisfaction than any substantive decisions made (Lawrence, et. al 1997:578; Kim and Mauborgne 1997). If participants are satisfied, they may learn more, share more opinions, brainstorm solutions, trust the sponsoring agency more and engage other stakeholders more constructively. Unfortunately, the relationship between procedural criteria (balanced membership, face-to-face discussions, etc.) and the goals of interest are poorly supported by the literature. As a result, process evaluations are unclear about what aspects of the process are necessary rather than merely sufficient for a desired result.

The five evaluative questions used in the Forest Service and water quality studies mentioned above, for example, would give a much more optimistic picture of the Fort Ord RAB than that painted in Section 1. It was reasonably balanced, represented a variety of community points of view, met early in the process, allowed for face-to-face discussions, and the agency was at least committed enough to try to salvage the process when it began to deteriorate. Only if we extend the questions to other aspects of the process, do the problems emerge. Lack of financial support, confusion over the RAB's decision-making role, an overly strict scope of discussion, and the appearance of a lack of commitment are probably the procedural factors that most fed the RAB's failure (Wernstedt and Hersh, 1997). Only by beginning with our expansive definition of outcomes, however, can we identify these as the important procedural issues to examine.

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independence of public to make decisions, set the agenda, and acquire technical information; and, the presence of a strong chairperson or facilitator.

Second, process criteria can't be applied to the wide variety of public participation mechanisms available. For example, it may make sense to have an advisory committee meet early in a process, but it is probably inappropriate to hold a mediation among stakeholders until relatively late, when interests are clear and deadlines are looming. Similarly, face-to-face discussions are probably not necessary if the goal is simply to transmit information, through online access to TRI data, for example.

Third, the criteria may not capture all of the important factors affecting a participatory process. Community conditions, existing relationships among stakeholders, and the institutional capacity of agencies may be very important contextual factors in how well processes function (English 1991; Peelle 1996). For example, economic, cultural, and racial differences among Fort Ord's surrounding communities probably made public involvement more difficult than it would have been for a more homogenous public. The advantage of looking at outcomes is that they capture all of these contextual forces. Attention to procedural issues is clearly an important part of evaluation, but, for all of these reasons, gives an incomplete picture of program success.

Interest-based Evaluations

A second set of answers to the problem formulation question concerns the interests of specific parties: public opposition prevents agencies from implementing projects, a community group can't stop the construction of a nearby incinerator, or a disenfranchised group can't get action on its unique concerns. All of these responses focus attention on the goals of only one set of interests, without regard to those of others. Regulatory agencies, the affected community, the active community, taxpayers or a myriad of other special interests may be the focus. In most decision-making settings with multiple stakeholders, these parties will seek incompatible goals. In some cases, tradeoffs can "expand the pie," but all participants will rarely be fully satisfied (English 1991:18; Rosener 1983; Sewell 1979). The multiplicity of interest-specific goals gives rise to

competing definitions of success.[7] Corresponding evaluations focus on whether participatory decisions satisfy one or more of these particular interests.

The most common type of interest-based evaluation—and the type most often criticized as a relic of the "decide, announce, defend" approach to agency decision making—takes the perspective of the sponsoring agency. Goals are often some form of public ratification of agency decisions. When Landre (1993), for example, solicited goals from program coordinators dealing with Great Lakes issues, building public support for the agency's Remedial Action Plans was one. Although ratification of their plans is a goal shared by most agencies, it is unlikely to be shared by other stakeholders with different ideas about how projects should be carried out. Often agency self-evaluations take this approach. In a survey of 22 public participation program evaluations, Sewell (1979) reported that "to secure public acceptance of agency proposals" was the dominant objective in all evaluations performed solely by agency personnel. Evaluations performed by citizen groups, independent observers, and consultants, on the other hand, contained a variety of different objectives.

At the other pole of interest-based evaluations are those taking the point of view of the public. Of course, the public may have a panoply of competing and complementary goals or may have goals regarding the quality of the participation itself. For groups which have traditionally been excluded from decision making processes, their mere inclusion may represent a significant goal.

The main advantage of interest-based evaluations is their relative simplicity: Did party X get what it wanted or not? This simplicity, however, is also these evaluations' main weakness as it forces the evaluator to determine which parties' demands are more legitimate. In the Fort Ord case, the Army saw the RAB as a fiasco because it failed to address substantive issues. Activists saw the RAB as a success to the extent that they

[7] For a list of the variety of definitions of success used to evaluate public participation programs, see Lynn and Busenberg (1995).

were able to make their opposition known. Who was in the right? The consultants who recommended that the RAB be disbanded did so because the wider community's views were not being heard. Yet there appears to have been no unified community voice at Fort Ord. Instead, there were likely to be disagreements among various "publics." Which one of these should triumph?

Some researchers have attempted to overcome the problem of picking the "right" interest by attempting to measure the achievement of all stakeholder's goals and then aggregating the results into some overall measurement of success. At least in theory, these evaluations would measure the satisfaction of all affected parties to a decision, add them up, and compare the result to a similar decision achieved without participation. Kerwin and Langbein (1995) took this type of approach for a very comprehensive attempt to measure the effectiveness of regulatory negotiations. Although the authors were able to get overall measures of participant satisfaction, the task of identifying a baseline with which to compare the negotiated approach proved more complicated than anticipated, and baselines were not included in the report. The difficulty of this methodology for a very formal mechanism such as regulatory negotiations bodes ill for using it to evaluate other, considerably more messy, methods for involving the public.

Conclusion on Evaluative Frameworks

Process and interest-based evaluations, as well as the social goals approach presented in Section 1, all have advantages and disadvantages. Neither the process evaluations nor the interest-based evaluations meet the three requirements spelled out in the introduction: applicability to multiple mechanisms, objectivity, and outcome-orientation. However, they are better designed than the social goals framework to tackle important issues of re-democratizing environmental decision-making or addressing problems that any particular party has in achieving its objectives. Choosing an evaluative framework is less a matter of identifying the "right" method, than of picking one's poison. The choice of approach should be tailored to the kind of problems the evaluator is interested in and the questions

he or she is trying to answer. That said, it is reasonable to assume that some of the social goals—particularly restoring trust and reducing conflict—will not be achieved without attention to the democratic values and specific interests of the various participants which form the basis of the alternative evaluative frameworks discussed in this section.

SECTION 3. LINKING MECHANISMS AND GOALS

The six societal goals outlined in Section 1 apply to public involvement writ large. In practice, participation occurs through only a limited number of mechanisms. The discussion in this section is limited to mechanisms intentionally instituted by government to involve the lay public, or their representatives, in administrative decision-making on environmental issues. The definition explicitly excludes important conventional and regulated methods of participation such as voting and lobbying as well as unconventional and extralegal methods such as striking, picketing, and violence.[8] In an important sense, formal participatory mechanisms are substitutes for a more direct approach to democracy than that provided by our representative system. If all decisions were made through popular vote by informed individuals—the model of the New England town meeting, for example—most of these participatory mechanisms would not be necessary. The controversies over direct democracy, however, are well known.[9] The participatory mechanisms discussed here can be viewed as an indirect but manageable way of introducing popular democracy into a representative system.

Each participatory mechanism can be anticipated to be relatively better at achieving some of the social goals and worse at others. This section outlines which goals each mechanism ought to be expected to achieve. It covers one-way flows of information such as surveys, focus groups, and public education; traditional participatory mechanisms,

[8] It also excludes public input through referenda, initiatives, and citizen suits although the analysis could be extended to include these mechanisms.

such as public hearings, public comments, and advisory committees; mechanisms associated with collaborative decision-making and conflict resolution, such as mediation and regulatory negotiation; and innovative forms of public deliberation, such as citizen juries and consensus conferences.

Matching mechanisms to goals is useful for the evaluator and the practitioner. It provides the evaluator with an appropriate set of goals by which to realistically assess the success of a given public participation process. For the practitioner, it assists in selecting the type of mechanism which is most likely to achieve the goals of interest. Should an advisory committee be formed, or will a public education campaign suffice? Could a mediation be used, or would a public deliberation be more appropriate? Of course, goals are only one consideration in such decisions. Some mechanisms, such as mediations and negotiations, have quite a specific list of prerequisites before they can be undertaken successfully (Bingham 1986; Kerwin and Langbein, 1995). Rather than delving into these contextual issues, this section deals with the question of what goals each mechanism could achieve if undertaken under the best of circumstances.

The approach we take for matching mechanisms with goals is reductionist in nature. It breaks down the various mechanisms into four component characteristics, including:

- information flows,
- the degree of interaction among potentially opposing interests,
- the type of representation, and
- the decision making role of the public.

Figures 1 and 2 present a graphic typology of mechanisms showing how they are arrayed along the dimensions defined by each of the four characteristics.[10] *Information flows* can

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[9] See Thomas E. Cronin, *Direct Democracy: The Politics of Initiative, Referendum, and Recall*, (Cambridge, MA: Harvard University Press, 1989) for an interesting recent discussion.

[10] The figure describes each mechanism in its stylized form. This raises questions about how they are supposed to be designed and used as opposed to how they are designed and used in practice. In practice, the applications of some of these mechanisms may differ so much that it may be possible to array case studies of the same mechanism along many of the same dimensions we are using to distinguish between

be one-way, with information flowing from the public to the government in forms such as surveys and focus groups (Group A). Or, they can go in the opposite direction, with government providing information to the public through public notices or the provision of right-to-know information (Group C). Mechanisms employing two-way flows of information, such as advisory committees or mediations—offer varying degrees of opportunity for deliberation among participants (Group B). The degree of *interaction among potentially opposing interests* can range from none, as in the case of a survey, to high, as in the case of a multi-party mediation. The *type of representation* ranges from citizens representing themselves at a public hearing, to "representative" members of an advisory committee, to professional public interest or environmental group representatives engaged in a regulatory negotiation. The *decision-making role of the public* can range from none, in the case of a focus group, to a direct decisional role in ratifying an agreement arrived at through mediation.

Each characteristic is linked to goals by way of hypothesized relationships:

- Information flows. Mechanisms which provide information about the public to the government—Group A—will be mainly useful for providing decision-makers with public values, assumptions, and preferences (Goal 2) and substantive information to improve decisions (Goal 3).[11] Mechanisms which provide information from the government to the public—Group C—will be mainly useful for increasing public knowledge (Goal 1) and, to the extent that they increase transparency, increase trust in institutions (Goal 4). Mechanisms which allow for two-way flows—Group B—ought to be expected to achieve all of these first four goals.

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different mechanisms. This is one reason to break each mechanism down into component parts rather than use the qualities of a generic form.

[11] Although there has been evidence (Stout et. al. 1996) that mechanisms such as surveys can increase public knowledge about an issue (Goal 1) and improve the public perception of an agency (related to trust, Goal 4) these are certainly secondary effects, if they occur at all.

Figure 1

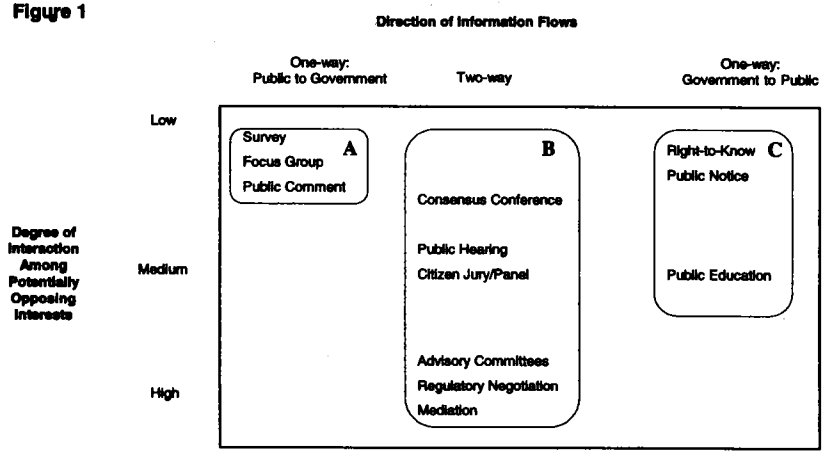
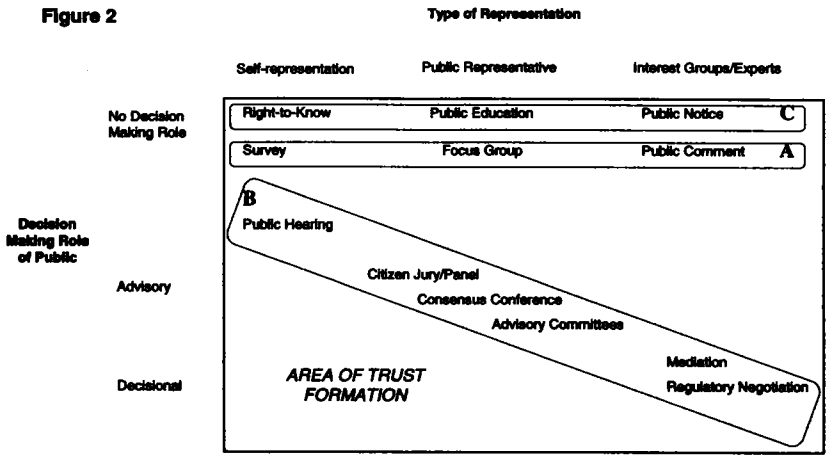


Figure 2



- Interaction among potentially opposing interests. The greater the degree of interaction among potentially opposing interests, the greater will be the opportunity for reducing conflict among stakeholders (Goal 5). This applies mainly to mechanisms in Group B.
- The type of representation. All else equal, mechanisms in which the public represents itself (through direct participation) will be better at achieving the goals of education (Goal 1) and trust formation (Goal 4) than those where the general public is represented by "representative" members or professionals (such as lobbyists, etc.).
- The decision making role of the public. All else equal, mechanisms which give the public a direct decision-making role will be better at achieving the goal of trust formation (Goal 4) than those which do not. This applies mainly to mechanisms in Group B.

One important relationship between mechanisms and goals should be highlighted. For mechanisms in Group B, there is an evident trade-off between the control the public has over decision-making and the extent to which the members of the public represent themselves in the process (see Figure 3). This has its greatest implications for issues of trust. According to our assumptions, trust formation will be greatest where the public is both self-represented and plays a decision-making role. However, none of the mechanisms we are discussing have both of these characteristics. The discussion returns to this issue at the end of the section.

The reductionist approach presented here allows us to abstract from the great variety of participatory mechanisms to a manageable set of variables and to make explicit the relationships that we believe tie each mechanism to the goals it can achieve. However, the literature supporting this approach is only suggestive. Although the four characteristics allow us to make useful distinctions, we may have overlooked other important ones. Likewise, the hypothesized relationships between characteristics and goals may turn out to be more complicated than suggested here. Beyond its utility for

simplifying a complex world, the advantage of the reductionist approach is to make these various assumptions clear. We suggest them as areas for further research.

Discussion of Mechanisms

The characteristics and hypotheses outlined provide general insights into what goals different mechanisms might achieve. These are described in Table 2 and are refined in sub-sections below.

Table 2: Goals and Mechanisms

	Goal 1		Goal 2	Goal 3	Goal 4	Goal 5	Goal 6
Mechanisms	education	information	public values	substantive quality	trust	reduced conflict	cost-effectiveness
Non-Deliberative Mechanisms for Obtaining Information From the Public							
Survey	○	○	●	●	○	○	●
Focus group	○	○	●	●	○	○	●
N &C Rulemaking	○	○	●	●	○	○	●
Non-deliberative Mechanisms for Providing Information to the Public							
Information provision	◗	●	○	○	●	○	●
Public Notice	○	◗	○	○	◗	○	
Public education	●	◗	○	○	●	◗	●
Traditional Mechanisms							
Public hearing	○	●	●	●	◗	◗	●
Citizen Advisory Cte.	●	◗	●	●	●	●	●
Public Deliberation							
Citizen Juries/Panels	●	◗	●	●	◗	◗	●
Consensus Conference	●	◗	●	●	○	◗	●
Alternative Dispute Resolution							
Mediation	○	○	●	●	◗	●	●
Regulatory Negotiation	○	○	◗	●	◗	●	●

○ = not applicable
◗ = may be applicable
● = applicable

Non-Deliberative Mechanisms for Obtaining Information From the Public

These mechanisms include statutory procedures for soliciting public input through comments on proposed rules or environmental impact statements. They also include non-statutory mechanisms, such as surveys and focus groups, that help public managers incorporate information about the public into decision making. For example, Roper's "Environmental Report Card," mentioned in Section 1, could be used by EPA to guide an education campaign about the role of run-off in water pollution. Likewise, polls may be

used to help decide between policy options. For example, pubic opinion polls regularly show that Americans do not support the use of gasoline taxes as a strategy for controlling carbon dioxide emissions.

As a group, these mechanisms provide one-way flows of information from the public to the government. Little to no deliberation among different stakeholders takes place, and input is rarely binding on decision-makers. The source of public input differs, however, among mechanisms. While surveys collect the views of individual citizens, focus groups use "representative" citizens as a proxy for public opinion. Comments on permits and proposed rules are still more distant from the average citizen as they have come to be dominated by professional environmental or public interest group representatives (ELI 1991:1).

The primary goals against which surveys, focus groups, and public comments should be judged include the degree to which they facilitate the incorporation of public values into decision making (Goal 2) and foster the generation of policy alternatives (Goal 3). An interesting research question is how the achievement of these goals changes as the consulted public changes from many citizens (surveys) to representative citizens (focus groups) to citizen representatives (public comments).

Non-deliberative Mechanisms for Providing Information to the Public

At the other end of the information spectrum are one-way flows of information from the government to the public in forms such as public education campaigns, the provision of right-to-know information, and public notices. The accessibility of chemical emissions and transfer data through the Toxics Release Inventory (TRI) may be the best known example. Although these mechanisms are relatively passive, the intent is often to inspire more active participation. For example, Advanced Notices of Proposed Rulemaking, which alert the public through a *Federal Register* notice of upcoming opportunities to comment on rules, are intended to encourage public input into the rulemaking process.

Proposed federal legislation requiring electricity providers to supply information on emissions and fuel-type to customers on their monthly bill may encourage customers to select power suppliers based on environmental performance (NAPA, 1997:33). For some of these mechanisms—such as the dissemination of TRI data—intermediaries, such as the media or community groups, play important roles in identifying and disseminating information to a wider public.

These mechanisms should be expected to create a better informed and educated public (Goal 1) and to increase trust (Goal 4) by making government and the regulated community more accountable and transparent to citizens. Whether information provision informs a large number of people or educates a small number will depend on the mechanism and how it is used. For example, on-line access to Superfund databases has the potential to reach a large (although perhaps not representative) number of people with summary data on listed sites, while public education campaigns may reach a targeted (and more representative) audience with in-depth information. In contrast, few, if any, members of the public can be expected to monitor the *Federal Register* for public notices except those who are paid to do so. Similarly, the type and quality of government information provided to citizens will determine its impact on trust. Some forms of public education, if they involve interaction between the public and government, may play a small role in reducing conflict (Goal 5).

Public Hearings

Public hearings remain the most common form of face-to-face public involvement in spite of nearly universal criticism of their ability to provide meaningful participation. EPA convenes hundreds of hearings per year (Fiorino, 1990:230). Most are used to defend agency decisions rather than to involve the public in the decision-making process itself. Agencies often hold hearings late in the process, present technical information beyond the understanding of the lay public, and seek to do little more than fulfill administrative requirements (Fiorino, 1990:230).

Although information flows in a public hearing are nominally two-way, they are generally not deliberative. The two-way flow of information would suggest that public hearings ought to be able to achieve the first four goals: increasing public knowledge (Goal 1), providing decision-makers with public values, assumptions, and preferences (Goal 2), providing substantive information to improve decisions (Goal 3), and, to the extent that hearings increase transparency, increase trust in institutions (Goal 4). However, the lack of real deliberation might lead one to predict *a priori* that most public hearings will do a poor job of achieving these goals. Hearings might best be thought of as active forms of notice and comment procedures, with the government contributing summary information and the public responding with comments for the record (ELI 1991).

The outlook for trust formation is particularly bleak. Public hearings include all of the active and concerned public who choose to attend, but the non-binding nature of public input militates against trust formation. Moreover, a number of studies have determined that the majority of those who choose to attend hearings actually represent organized interests with significant economic stakes in the outcome (Fiorino, 1990:231). This latter point also suggests that the educational value of public hearings will be limited, except insofar as they educate the government about the political array of forces on an issue.

Because they offer an opportunity for government and the active public to interact, public hearings ought to be expected to reduce conflict (Goal 5), at least between stakeholders who attend. Because the process is not deliberative and often does not include other stakeholder groups, the opportunities for conflict reduction, however, are likely to be limited.

Citizen Advisory Committees

Citizen advisory committees (CACs) encompass a wide variety of organizations which represent "a relatively small group of citizens who are called together to represent ideas

and attitudes of various groups and/or communities" (Rosener 1978:188). They should be distinguished from expert advisory committees which agencies use extensively to bring outside scientific, economic, and other technical information into government decision-making processes (Jasanoff, 1990). The Fort Ord RAB provides an example of a citizen advisory committee, but the form and function of CACs vary widely. Federally endorsed committees established under the Federal Advisory Committee Act follow strict requirements regarding representation, transparency, and government involvement. CACs may also be quite informal, including groups which were established without government involvement but that have come to represent public views in policy making. For example, the Anaconda-Deer Lodge Advisory Committee was formed by community leaders and residents to represent the community's interests in the Anaconda, Montana Superfund site clean-up process (WMREI 1991). CACs are used to advise numerous aspects of environmental policy including rulemaking, standard setting, permitting, and planning.

Advisory committee members are intended to serve as the voice of the larger public, although in practice this has been interpreted to include elected officials and other elites as well as "typical" members of the community.[12] Even in the latter case, a number of studies have shown that participants are often not representative of the wider community in terms of income and education (Lynn and Kartez 1997). CACs often present members with the opportunity to engage in discussions with a number of other interests, either internally in committees with "balanced representation" or externally with other organized interest groups. They typically play only an advisory role, but ideally their input is explicitly incorporated into the decision-making process. Where committees are balanced, the CAC can act like a voluntary negotiating body where each participant represents broad constituent interests (Lynn and Kartez 1997). The stakeholder groups established under EPA's Project XL program are an example (NAPA 1997:75-106). In

[12] Organizers of CACs, such as agency officials, often have considerable power in picking committee members (Lynn and Kartez 1997). For the variety this discretion fosters, see Perhac (1997) on public involvement in comparative risk assessments.

such cases, consensus agreements may carry considerable weight in forming the basis for government decision-making.

The deliberative and representative nature of advisory committees suggests that they ought to achieve the first four goals: increasing public knowledge (Goal 1), providing decision-makers with public values, assumptions, and preferences (Goal 2), providing substantive information to improve decisions (Goal 3), and, increasing trust in institutions (Goal 4). To the extent that the committees are "balanced" they ought to provide opportunities for conflict reduction (Goal 5) between the stakeholders represented. Balance may also make it more likely that recommendations will be acted on. If this is the case, trust formation gets an additional boost.

Alternative dispute resolution mechanisms

The two primary alternative dispute resolution mechanisms in environmental decision making are regulatory negotiations and stakeholder mediations. Regulatory negotiations provide a formal process for stakeholders to negotiate the content of federal regulations. Stakeholder mediation describes a far more diverse, and often non-governmental, set of approaches for bringing together opposing interests to settle divisive issues. Some of the most successful mediations have been over resource issues in the western United States. For example, a grass roots effort to seek consensus on water management issues in Montana's Clark Fork River Basin brought miners, ranchers, municipal officials, and environmentalists together after decades of acrimonious conflict to successfully resolve disputes over water use (NAPA, 1997:107-126).

Regulatory negotiations and stakeholder mediations offer substantial opportunity for two-way deliberations among a variety of opposing interests. Their explicit purpose is to reduce conflict and reach consensus, often in cases where other forms of agreement or dispute settlement have failed. If parties reach a decision, they are generally bound by it. In fact, this may be a critical aspect of successful negotiations or mediations (Bingham,

1986). Participants—particularly those representing the public interest—are often professional representatives rather than members of the lay public. One of the principal criticisms of regulatory negotiations, in particular, is that they only involve the "usual suspects" of lobbyists, NGOs, and government officials (Applegate, 1997).

The deliberative nature of alternative dispute resolution mechanisms would suggest that they would be likely to achieve the first four goals. However, to the extent that participants are "the usual suspects," this limits opportunities for public education. In spite of this trait, the mechanisms are still likely to be excellent fora for providing decision-makers with public values, assumptions, and preferences (Goal 2) and substantive information to improve decisions (Goal 3). The binding nature of many agreements would suggest opportunities for trust formation (Goal 4), however, the "usual suspects" issue once again may be a roadblock to achieving this goal. The explicit attention to consensus building and conflict resolution among a wide range of stakeholders suggests that negotiations and mediations provide ample opportunities to reduce conflict among stakeholders (Goal 5).

Citizen deliberations

Mechanisms for citizen deliberation include citizen juries (or the related "citizen panels") and consensus conferences. Many of the examples of these mechanisms in the U.S. have been non-governmental experiments in participatory policy analysis on complex issues such as education policy, energy planning, and public spending priorities. Some states have used these mechanisms to inform decisions about risk prioritization, water quality planning, and sludge disposal (Jefferson Center, 1997; Crosby et. al. 1986; Renn et. al. 1991). Although the format varies across different mechanisms, their purpose is to help non-expert citizens, acting as "value consultants," analyze technically complex subjects. Organizers provide a group of selected citizens with access to expert information and sufficient time to engage in deliberative analysis with experts and among themselves.

They are expected to combine the technical facts with public values into a set of conclusions and recommendations.

These mechanisms are explicitly designed to allow two-way communication between experts and the public, and sometimes government. However, experts and the government are mainly information resources, and most of the actual deliberation takes place among the citizen members of the group. Participants are not interest group representatives although they are regarded as representative of the public. In some citizen juries, they may even be selected through random sampling (Fiorino, 1990:235). All of these factors would suggest that deliberative fora ought to be particularly good at educating participants (Goal 1), providing decision-makers with public values, assumptions, and preferences (Goal 2), and generating substantive information to improve decisions (Goal 3). In the past, many of these mechanisms have had public or media outreach programs which extend educational opportunities beyond those who actually participate.

The mechanisms involve a limited number of opportunities for interaction between interest groups (other than the extent to which participants identify themselves with various groups in their daily lives). Opportunities to reduce conflict (Goal 5) are therefore minimal. Trust formation (Goal 3) is also unlikely as the results of the efforts are purely advisory, and many have had no formal tie to government decision making processes.

Discussion

An examination of the characteristics of various public participation mechanisms allows us to come to tentative conclusions about what goals they should achieve. These are useful for the practitioner in knowing which mechanism to pick. They are also useful for the evaluator in knowing what goals to use in evaluation, as well as allowing an analysis of whether the right mechanism was chosen.

The discussion provides new insights on the Fort Ord case. One of the issues following review of the RAB was what type of alternative forms of public participation at Fort Ord would be considered legitimate. Some felt that the Army's decision to seek other forms of public input beyond the advisory committee was an end-run around legitimate opposition and the subversion of a democratic form of decision-making. The above discussion casts this debate in a different light. Changing the forum for public involvement from the RAB to another type of mechanism could be viewed, not as a violation of some model of democracy, but as a narrowing of the goals which can be achieved. If, for example, the Army chooses to use surveys or focus groups to solicit public opinion, opportunities for educating the public, building trust, and reducing conflict recede. If they try a mediated solution, it may resolve conflict but the problems of education and trust remain. If they use a public hearing format, all of the same goals apply, but the likelihood of achieving them is reduced. On a more positive note, the analysis can suggest more effective participation strategies. Perhaps the Army could combine a public education campaign with a well-publicized citizens' jury and accomplish many of the same goals that the RAB might ideally achieve.

The analysis generates a few additional observations. As mentioned previously, in spite of the importance of rebuilding trust, no mechanism is ideal for it. According to Schneider, et. al. (1997) and Slovic (1993), the ideal mechanism would be one which provided individual citizens with binding decision-making authority. It is quite unlikely, and often illegal, for government to cede this authority to citizens except through voting. The only possible contenders for the space may be the direct democratic processes of referendum, initiative, and recall. However, these are born of a profound mistrust of government and are not processes which government can explicitly utilize in decision-making. Suffice to say that building trust through public participation may be a daunting task and that research on the topic is that much more important.

Equally disheartening is that mechanisms that stand a good chance of achieving many of their goals are far less frequently used than those which could be predicted to fail. Between 1980 and 1996, EPA completed only 12 regulatory negotiations (Coglianese, 1997). Combined, the number of citizen juries and consensus conferences undertaken in the U.S. on environmental issues is even less. In Executive Order 12838, President Clinton requested the elimination of at least one-third of all federal advisory committees not required by Congress (GSA, 1996). In contrast, EPA holds hundreds of public hearings a year, and public notices in the *Federal Register* are still the most frequent method of providing public information. Legal requirements, habit, uncertainty, and cost certainly play roles in this pattern. A bit more investment in different forms of public participation, however, may increase the benefits dramatically. The apparent increase in local mediations in communities around the country and the use of citizen advisory committees at federal facility Superfund sites (the Fort Ord case notwithstanding) are a positive sign (Bernard and Young, 1996; FFER, 1996).

SECTION 4. CONCLUSION

This paper should make clear that public participation and its evaluation are complex phenomena. Participation is expected to play multiple roles in environmental policy, including solving the ills of a conflictive regulatory system, restoring democracy, and empowering particular parties to a decision. Even when we realize that there are various useful and legitimate mechanisms for involving the public, we find that some very important goals—such as rebuilding trust—are unlikely to be achieved.

Through tailored evaluations of participatory programs' ability to achieve six social goals, the framework presented in this paper achieves its original intent to 1) identify the strengths and weaknesses of a number of different mechanisms available for involving the public, 2) be "objective" in the sense that it does not explicitly take the perspective of any one party to a particular decision, and 3) measure—to the extent feasible—tangible outcomes from participation.

These tangible outcomes are:

- educating the public;
- incorporating public values, assumptions, and preferences into decision making;
- increasing the substantive quality of decisions
- fostering trust in institutions;
- reducing conflict; and
- achieving cost-effectiveness.

The discussion of alternative frameworks pointed out their weaknesses in accomplishing what this paper set out to do. However, we maintained that those approaches may be entirely appropriate for a different set of questions and constraints. Notable among these would be cases where equity considerations make it clear that a particular group should have its interest met. The paper suggested that, although process evaluations may be of limited use, attention to process is clearly important for examining why social goals were, or were not, met.

There are a number of areas which would benefit from further research. The first was suggested in the discussion of process evaluations. An "impact model" which describes how an intervention (the participatory process) affects an outcome (the social goals) does not exist in the literature. Further research on how various procedural factors affect the outcomes of interest will be important for designing and evaluating participatory programs in the future. The second research need was suggested in Section 3. Many of the relationships between the characteristics of various mechanisms and the goals which they might accomplish are merely hypothesized. Further research could address whether, for example, bringing more stakeholders to a decision actually does lead to more opportunities for conflict resolution. The posited relationships between representation and education or the public's decisional role and trust should also be analyzed. Finally, further research should address how the analysis of mechanisms and goals changes when dealing with different environmental issues. How does participation in a controversial facility siting decision differ from that of a relatively non-controversial comparative risk

assessment? What goals are important? Which mechanisms are more effective? A starting point for addressing all of these research needs would be the application of the evaluative framework described here to multiple case studies where different participatory mechanisms were used to address a variety of environmental issues. Not only would such a study pay attention to whether social goals were achieved, but would examine what procedural factors (early involvement, face-to-face discussions, etc.), structural factors (information flows, representativeness, etc.), and contextual factors (type of environmental issue, technical complexity, etc.) influenced goal achievement.

The evaluative framework we proposed here provides a starting point for this larger research effort and should prove useful in evaluating a number of different types of public participation programs. The strength of the framework is its utility for answering the question "What is society getting from efforts to involve the public?" In so doing, the outcome-oriented framework may allow us to get beyond seeking ways to simply increase public involvement, and help us tackle unanswered questions of when, how, and why it should be used.

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Mr. DAVIES. Thank you. Let me make three points in my oral testimony. First, the advisory committees, as has been said by a number of the other witnesses, are a key tool for public participation, and I think this is the correct context to consider the Federal Advisory Committee Act.

You, yourself, I think made that point well, Mr. Chairman, in your opening remarks. The dollars are too large to be neglected, but they are really not the major point here. And I think certainly the game of the number of committees really misses the point to a great extent.

The key thing is that advisory committees have characteristics that most other forms of public participation do not. They are ongoing, so they can provide continuity. They are interactive, and so they can provide for give and take between citizens and the government. And they allow for the government to utilize the appropriate expertise to deal with particular problems.

And I think Jim Dean and his colleagues at GSA understand this larger context and I think they are to be congratulated for that because it would be easy for them, frankly, to take a different perspective.

The second point is that I think, based on the research that we have done so far, we would conclude that the Federal Advisory Committee Act has interfered to some degree with public participation. This has happened in two ways. It has happened first as a sort of preventive or an impediment to bringing in citizen views in the first place. It has been invoked by a number of different agencies, particularly in the field, as a reason not to consult citizens, as an excuse to not engage in that kind of dialog. And also a somewhat different kind of preventive effect in that it has been used as an excuse by agencies not to do peer review of certain critical documents.

Just as a quick aside, I think it's important to distinguish between two kinds of peer review; the kind that the NIH spokesman was talking about, which is peer review for awarding grants, as contrasted with peer review of reports, documents, rules, other particular outputs. Those are really two quite different functions, and it is particularly in the latter case, I think, where FACA has been invoked at times as a reason not to have outside peer review of documents.

The second way in which FACA interferes is that some of the specific conditions of the act are an impediment to citizens giving their opinions and participating or giving advice.

The requirement for approval of the committees, and particularly when combined with the White House ceiling on number of committees, sends a very ambivalent signal, I think, about advisory committees and, frankly, to me is really unnecessary. We should be encouraging advisory committees, not trying to set ceilings on them. So that double signal I think is not helpful.

And also some of the specific provisions for assuring agency control over the advisory committees in some contexts is an impediment. On the site-specific level or at the national level in the case of a group like the National Academy of Sciences, independence is essential and the members or potential members of advisory committees perceive that independence to be essential. So some of the

provisions that assure government control can, as I say, be an impediment. So the second general point is that I think there are problems here in terms of FACA and participation.

The third point is that there is a need to review, to modernize, and to reconsider the overall question of public participation, the kind of overall review that Jim Dean mentioned in terms of the mechanisms available, when they are appropriate, and how they could be improved.

It is, I think, in some ways sort of the worst of times and best of times with respect to participation. It is the worst of times in the sense that most of the mechanisms that we rely on have significant problems.

Dr. Applegate talked about notice and comment rulemaking and the problems with that. Public hearings—not much hearing goes on in most public hearings these days. They tend to make problems worse as often as they make them better, and obviously we are talking at length today about the potential problems with advisory committees.

There are real problems with the existing mechanisms. On the other hand, there are a large number of quite exciting and promising experiments going on, particularly at the regional and local levels, in public participation, things like river basin consensus groups and a number of other grass-roots efforts.

There are a number of interesting things going on in terms of dispute resolution, regulatory negotiation and so on, which open up some very interesting and promising areas for public participation.

Finally, but maybe most important of all, are the technological changes that have taken place in recent years. Particularly the internet and the web have radically transformed both the possibility of providing information to citizens and receiving information from them.

In closing, I would say that the subject of citizen participation is critically important for the future health of this democracy, and I congratulate this committee on looking into that subject. We would be very happy to assist you if you decide to pursue these questions. Thank you.

Mr. HORN. Well, that is very well said. And again, as your predecessor, Professor Applegate, you have got it very well organized.

[The prepared statement of Mr. Davies follows:]

I appreciate the opportunity to provide this testimony, and I congratulate the committee for examining a topic of great importance. The views provided in both my oral and written testimony, as well as those expressed in the materials submitted for the record, are not views of Resources for the Future (RFF). RFF is a research organization that does not take positions on public policy issues. The views expressed, therefore, are mine or those of the paper authors.

From our perspective, the Federal Advisory Committee Act (FACA) should be considered in the context of public participation in the United States. The advisory committees which it governs are important tools for participation but obviously not the only ones. My testimony will address the general topic of public participation—mainly in the context of environmental decision-making—and the more specific topic of FACA's impacts on participation.

While virtually all federal environmental statutes allow for some form of public participation, a number of recent high-profile analyses have noted that the mechanisms available for involving the public are inadequate. The National Research Council's 1996 report, *Understanding Risk*, and the Presidential/Congressional Commission on Risk Assessment and Risk Management's 1997 report, *Framework for Environmental Health Risk Management*, both recommend that agencies make a greater effort to increase public involvement throughout the policy development process. Yet the participatory methods institutionalized in environmental law—such as formal comments, public hearings, and citizen suits—have proved inadequate to effectively meet the challenge of constructively involving the public.

Recent efforts at a number of federal agencies show a commitment to moving beyond current approaches to public involvement. For example, the Environmental Protection Agency, Department of Energy, and Department of Defense have initiated over 200 citizen advisory groups at contaminated sites around the country. The challenges these and other efforts face, however, are high. Downward trends in what political scientists term "social capital" have been acutely felt in the area of environmental management. Trust in government has been deteriorating over the last

thirty years. Conflict between stakeholder groups and government agencies—particularly at the site-specific level—is endemic. And, as a recent "National Report Card" on citizens' knowledge about environmental problems has pointed out, education about environmental problems and the public's role in them is sorely lacking.

Research Program

The related trends of declining social capital and what appears to be a renewed commitment to public participation in government at all levels has led Resources for the Future to launch a substantial research effort on public participation in environmental decision-making. The research seeks to evaluate the success of participatory efforts to date and recommend how these efforts can be improved. Our research agenda has four broad components: 1) a comprehensive evaluation of existing public participation case studies; 2) an analysis of "innovative" approaches to participation; 3) an examination of the relationship between participation and trust—as both a precondition for participation and an outcome of it; and 4) an evaluation of the impact of information technology, particularly the Internet, on participation.

To date, we have produced two papers on public participation. The first outlines a framework for evaluating public participation programs. The second is an analysis of the Federal Advisory Committee Act and its effect on public participation in federal environmental decision-making. These papers have not been published in final form, but drafts are available for inclusion in this hearing's record.

Evaluating Public Participation

Despite the waxing and waning of interest in public participation over the last thirty years, no consistent method has emerged for evaluating the success of individual participatory processes or the desirability of the many participatory methods. One reason is a lack of consensus on what public participation is supposed to accomplish. Are participatory programs intended to empower disenfranchised groups or to make it easier for government agencies to implement their programs? Is a program successful if it

simply involves more of the public, or should it have to result in demonstrably better decisions?

A second, and perhaps more intractable, barrier to consistent evaluation arises from fundamental differences of opinion on the nature of democracy. Most people would not dispute that, in a democracy, citizens have a right to participate in the decisions which affect them. However, there are wide-ranging views on what form that participation should take. Should the public participate directly (through referenda, for example)? Does the involvement of interest groups in decision-making adequately reflect public concerns? Or, are surveys and focus groups sufficient for allowing government managers to make decisions that are responsive to public opinion? Different perspectives on the nature of democracy and the purpose of participation have led to widely divergent approaches to evaluating participatory programs most of which tend to favor *a priori* certain mechanisms for participation.

We have elected to evaluate participatory programs using six "social goals" which can be applied to many different types of participatory mechanisms. Social goals are those goals which public participation ought to be expected to achieve but which transcend the immediate interests of parties involved in a decision. The benefits of achieving these goals spill over from the participants themselves to the regulatory system as a whole. How well they are achieved often depends as much on how participants feel about the decision-making process as by the substantive decisions made during it. The six goals that form the basis of our evaluative framework are:

- Educating and informing the public,
- Incorporating public values into decision-making,
- Improving the substantive quality of decisions,
- Increasing trust in institutions,
- Reducing conflict, and
- Achieving cost-effectiveness.

The goal of an *educated and informed public* is derived from the normative argument that, in a democracy, citizens have a right to be involved in the decisions which affect them. To be effectively involved, the public should know enough about the relevant issues to be able to formulate alternatives and discuss outcomes with government

representatives and experts. At a minimum, the public should have enough information to make intelligent choices if called on to do so, through, for example, a referendum.

The goal of *allowing the incorporation of public values and knowledge* into decision making is derived from the insights of the risk perception and communication literature that outline dramatic differences between lay and expert perceptions of risk. These findings support an argument that differences over values, assumptions, and preferences should be deliberated in a process that assigns value to public perceptions of risk. A related goal, *increasing the substantive quality of decisions*, recognizes the public as a legitimate source of knowledge for improving the technical rigor of decisions and increasing political support for them..

The goal of *fostering trust in institutions* is based on the dramatic decline in public trust of government and other major institutions over the last thirty years. It recognizes that such loss of trust is a legitimate reaction to scandals and mismanagement, but that its restoration is crucial to cooperation between the government and public in managing the environment. In addition to rebuilding trust, public involvement ought to *reduce conflict among competing interests*. This goal is based on the argument that collaborative decision-making is more likely to result in lasting decisions which increase aggregate benefits for the parties involved.

The final goal, *cost-effectiveness*, acts as the resource constraint on the achievement of the other goals. It argues that the selection and implementation of public participation methods ought to be the most appropriate given the issues and interests involved.

Evaluation based on these social goals reflects a more expansive view of the "outcomes" of a participatory process as more than just the decisions that were made. This broader view of outcomes includes some of the most important results of participatory processes—and indeed those which justify opening up decision processes to the public in the first place. We are currently evaluating a number of case studies on environmental planning in the Great Lakes region using this framework.

The Federal Advisory Committee Act and Participation

In addition to our work on evaluating public participation, we have undertaken an examination of FACA and its consequences for public participation in environmental decision-making. Since 1972, a discussion of public participation through federal advisory committees is inseparable from a discussion of the law which regulates them. FACA is "one of the four pillars of open-government laws," along with the Government in the Sunshine Act, the Freedom of Information Act, and the Administrative Procedures Act. Although the law has become a powerful influence on how public participation occurs at the federal level, FACA was not designed to increase participation in government *per se*, but to manage the process in a way that limits the influence of special interests. Its requirements for a formal charter, balanced membership, and open meetings were born as much out of fear of too much influence from certain "publics" as too little responsiveness to the public at large. The law has therefore had profound implications for who participates, when they participate, how they participate, and what influence participation has on decision-making.

A number of recent criticisms have charged that FACA constrains public participation, particularly when government agencies have adopted more participatory environmental management approaches, such as ecosystem management and place-based decision-making. Our paper looks at three ways in which FACA may have a "chilling effect" on public participation. In the first, public groups who would otherwise contribute to environmental decision-making are confronted by FACA's procedural requirements and find that they create a barrier too high to surmount. This effect prevents "bottom-up" participation by groups who would otherwise bring a public perspective to decision-making. In the second, ambiguity about the law's scope and balance requirements—and litigation arising from (or taking advantage of) this ambiguity—has led to a hesitancy among agency personnel to engage in any type of public involvement with entities not chartered under FACA. Dubbed "FACA-phobia" this effect, either legitimately or as a convenient excuse, creates a disincentive for agencies to engage the public in decision-making. The third component of the "chilling effect" arises from efforts by the Clinton administration to limit the number and cost of

federal advisory committees. The ceiling on the number of discretionary advisory committees that agencies can charter potentially restricts committee formation to only those backed by the most political clout and receiving the most public attention.

The final component of the paper turns from FACA's "chilling effects" on participation to an evaluation, using the social goals framework discussed above, of advisory committees themselves. It examines advisory committees in a generalized way and suggests how agencies can do self-evaluations of committees using the framework.

The paper concludes that while advisory committees can be successful mechanisms for public participation, it is participation of a particular type. Specifically, advisory committees are likely to work best for engaging interest groups on high profile "inside the beltway" decision-making. Their format is likely to be conducive to educating participants and fostering discussions which can improve the substantive quality decisions as well as making decisions better reflect stakeholder values. These committees also provide opportunities for building trust and reducing conflict among those who participate. However, advisory committees are less effective at engaging a wider public and dealing with trust and conflict on this wider scale. Explicit attention to outreach and engagement beyond the confines of the committee is necessary to meet participation's social goals on this larger scale.

FACA is more problematic at the site- and region-specific level. It is in efforts to engage local communities and stakeholders that the law's chilling effects are most apparent. All three of the chilling effects we examined come into play. The law's procedural barriers can prevent local groups from forming FACA-chartered committees—a five year process in one case we examined. "FACA-phobia" prevents agencies from engaging public groups outside of FACA, particularly because issues of scope, committee balance, and conflict-of-interest are more ill-defined at the local level. At the same time, agencies are prevented from chartering new advisory committees due to the administrative ceiling on committee formation.

One lens through which we examined the effects of FACA on site- and region-specific committees was to look at how five agencies with environmental responsibilities (EPA, DOE, DOD, BLM, and the Forest Service) dealt with FACA in forming such committees. At all of these agencies, FACA has made public participation a much more

constraint-driven process. In the most benign cases, agencies simply became more creative about how they charter committees. For example, DOE chose to charter only one committee, but to have twelve subcommittees—one for each major clean-up site. In the more disturbing cases, agencies have chosen not to charter committees under FACA and have therefore intentionally limited their receptivity to the full potential of participation in order to avoid violating the law. DOD, for example, avoids seeking consensual advice from its Restoration Advisory Boards, which are not chartered under FACA. Similarly, the Forest Service has had to hold at arms length the various non-FACA efforts—such as the Quincy Library Group and the Applegate Partnership—which are trying to mediate extremely contentious disputes among stakeholders on natural resource issues. This comes after such groups were proclaimed as the future of forest management during President Clinton's first term. In contrast, the Forest Service's FACA-chartered committees have only been successful in dealing with quite narrow policy issues and have not been able to re-create this consensus-building atmosphere.

Conclusion

As a number of high profile research reports have noted, and many agencies appear to have realized, public participation in environmental decision-making can have a number of benefits which justify the added uncertainty and cost of opening up decision-making to the public. Our research has focused on some of these benefits—such as education, higher quality and more responsive decisions, trust, and conflict resolution. Our goal is to determine how well participatory efforts have achieved these goals and how such efforts can be improved. In some cases, improvements can be had by changing the laws which govern participation or the regulations which implement those laws. Reform of the Federal Advisory Committee Act (and/or its regulations) to extend the benefits of participation outside of the inner circle of advisory committee members and to give agencies more flexibility in engaging the public at the site and regional levels are two ways that participation at the federal level can be improved.

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Mr. HORN. Our last presenter, we are always glad to see the distinguished president of the National Academy of Sciences, Dr. Bruce Alberts.

Mr. ALBERTS. Good afternoon, Mr. Chairman. I last appeared here last November when you were considering an amendment to the Federal Advisory Committee Act; and as you know, such an amendment was passed in December, and I am here to report what has happened with respect to our compliance with the new requirements under the law.

Just to briefly give a take-home lesson, I think that our duties under the new Section 15 are very reasonable. And, in fact, I think they have helped us a great deal in making it possible for the public to better understand what we do, to have a sense of participation in those processes, as well as opening up much more what we do to the press, so that we explain to the public how we operate and what science policy is all about.

What I would like to do this afternoon is just to briefly provide an overview of our procedures and then to summarize some of the results, some of the quantitative results; and I would like mostly to give you a brief demonstration of how our World Wide Web site is being used to provide information to the public about our committee and our meetings, and how it is being used to encourage their active participation. As Mr. Davies said, it has made an enormous difference in how we can interact with the public.

To make time for this demonstration, I will abbreviate my oral remarks. To review, Section 15 of FACA presents the Academy with five major requirements.

First, to provide public notice of the committee members that we have tentatively appointed to a study committee, and to make a provision for public comment on the membership of those committees.

Second, it requires that every data-gathering meeting of the committee be open to the public with certain exceptions that are provided for in the act.

Third, it provides that such open meetings be advertised to the public in advance and that whenever we have a closed meeting, that is, a meeting of the committee alone for its own deliberations, that a brief summary be made available for review by the public, and again this is done on our web site.

Fourth, it requires that we maintain a publicly accessible file of all written materials provided to the study committee by all non-Academy individuals, make those available to any individuals who want to see them.

Finally, the act requires that we publicize those names of individuals whom we select as peer reviewers of our work after the study is finished, and we do that by publishing the list in the report itself.

According to the law, if these requirements are not met, an agency is prohibited from utilizing the report. And, therefore, at the end of each study the relevant Academy staff must certify to the government that the section 15 requirements have been substantially complied with according to the law. So our system for compliance is largely based on an extensive use of the World Wide Web site that we have.

Let me tell you briefly how that works. We have spent a lot of time, in fact we had an emergency response, the bill came so fast, to make sure that we had compliance on December 17th. We have had extensive staff training, and there is an 18-page manual on how the staff is supposed to present this information. Everybody has an electronic template to use in which they essentially have created a separate home page for the study. Every staff member directing the study has a separate home page on our web site.

The results go directly from that template up onto the web as soon as they push a button, and we have a special staff assigned to monitor compliance, that is, look at what is happening and make sure that no individual is making a mistake in what they put up or in forgetting to put up something.

In a moment I will show you exactly how this public access works and how it encourages participation in our processes. Let me give you a little data first.

Since the act was signed on December 17th, we have established 319 committee records. For the 2-month period of May and June of this year, our "current projects" web site, the site that I am going to show you which is specifically addressed to public comment on current projects, there were nearly 100,000 hits or an average of 1,600 or 1,700 hits per day.

We can tell from some the addresses some of the heaviest users of our site are in the government, that is, they have addresses ".gov." We have received about 120 unique comments through the current project to date about the committees in our studies.

Our system is still evolving. It changes every month. We made some changes just recently. We respond to the public. We have made responses to e-mails suggesting how we could improve the system, and we are doing so. Nevertheless, we believe what we have already accomplished is to establish a system that is very receptive to the act. As Congress intended, we are greatly increasing public awareness of who we are, how we work and giving them a real ability to participate both by commenting through the web and by attending all of these open meetings.

I am told that last month we had 92 open meetings in the month of June posted on the web site. That is about an average for each month, so there is an extensive amount of availability of our facilities and our meetings to the public. All of this has been able to be accomplished while retaining the independence so essential to our work that I testified about last November.

In short, I think things are working well, and I would now like to introduce Leona Coffee up there, who is the co-leader of the staff group who worked so hard to develop this electronic facility.

If we can start by going to our home page, this is the Academy's home page, if you see click here, "current projects," we are advertising the "current projects" part of the web site which is also up on that blue bar, which is probably very hard to see. That is the title bar that is on every page of the web. So from every page you can click on "current projects," and when you do that, what happens is that you get an introductory, "Welcome to the current projects system," a bunch of text which is sort of an overview, education on how to use the site. You can get information about how

to communicate with the Academy. If you click on the fourth blue line, you get detailed instructions about how you can communicate.

First of all, it provides general comments on a project. Second of all, it provides comments on committee membership or to get information from the public access file. So if you click on providing comments on committee membership—whoops, not found. Let's forget that one.

This is the problem with the technology. I saw Bill Gates give two demonstrations and neither one worked, so I don't feel so bad.

Let's just go to the way that the more typical user would use it. They go to the left stuff. The things on the left are the various views you can select directly from the beginning of the "current projects" system.

If you go to the bottom one, "committee memberships open for public comment," these are all of the members that have been tentatively appointed within the last 20 days and are still open for comment; and so let's see if that one works.

OK, if we click on one of these committees, the third one down, Committee on Human Exploration, what you get is the list of the committee members. You have to scroll down here. You get brief bios of each member. This is Norman Thagard, an astronaut who is the chair of this particular committee, and these are the kinds of biographies that we have our staff present. It tells you briefly about his background.

If you go to the bottom of the list, you see the special yellow feedback button which is the way that feedback is sent back specifically for this project. All you have to do is click on that button and type in the feedback.

Let's go back to the previous page, and this is viewed by subject. You have an index of all of the committees, 319 according to subject. Let's click on, say, "agriculture."

That expands into the list of committees with direct links to the committees. Those are the blue lines. Those are the various committees which have to do with agriculture.

You can also search this site. To use a search function, say you are interested in fish, you just type in "fish," what are we doing on fish, and you hit the search command. Do you see that? There.

We have a committee there. If you click on that committee to—I can't read it—to review the individual fishing quotas, that is what it is. Then you see which unit, who is the staff for it. Keep on going down. You have feedback. That yellow button is feedback at any stage you want.

If you click on that "project scope" button, you get a paragraph which describes exactly what the committee is supposed to be doing. That is "project scope," and a brief summary of what it is doing.

I think the most important thing is to show you all of the public meeting notices. The meeting number 3, that was held. So this was originally up on the front page of the web site, but now it is in the committee record; and this shows you if you go down the agenda to the meeting on January 26th, 1 something happened, 3 break and so and so spoke at 4 to 5, et cetera.

If you go to the very bottom, you will have the summary of the closed session. This is the summary of what happened at the closed

session, and it will show you who was present. I should stress, as a point of law, only members of the committee can be present at a closed session.

It says the following topics were discussed, and at the bottom it tells you the following materials were made available to the committee in closed session. If you want access to those materials, you click on that blue line, the library, and you arrange for a complete list of the materials and arrange to come and get them or have them mailed to you.

Mr. Chairman, that ends my testimony. I would like to end by thanking you for your support in this very interesting and important process.

[The prepared statement of Mr. Alberts follows:]

Good Afternoon, Mr. Chairman and Ms. Maloney.

Since my appearance here last November, when this Subcommittee was considering amending the Federal Advisory Committee Act, the National Academy of Sciences has been busy in meeting the requirements of P.L. 105-153, which was enacted on December 17, 1997.

We find our duties under Section 15 of this law to be very reasonable and we believe that they have had a positive effect by making our deliberations and processes more accessible and transparent to the interested public.

What I would like to do this afternoon, Mr. Chairman, is to provide the Subcommittee a brief review of our procedures for complying with Section 15 of FACA and summarize some of the results thus far. We will then give you a brief demonstration of how our Worldwide Web site is being used to provide information to the public about our committees, meetings and proceedings. This Subcommittee is of course very interested in the impact of information technologies c n government and its operations, and we are convinced that it would not have been possible to achieve our present level of compliance

without these new tools, which represent a major improvement over more traditional means of informing the public--- such as the federal register.

To review, Mr. Chairman, Section 15 of FACA requires the Academy to first, provide public notice of the committee members that it has tentatively appointed to a study committee, and to make a provision for public comment on the membership of those committees. Second, it requires that every data gathering meeting be open to the public with certain exceptions provided for in the act. Third, it requires that the public be notified in advance of all data gathering meetings of the study committees and that a brief summary be made available for review by the public for those meetings that the Academy has closed. Fourth, it requires that we maintain a publicly accessible file of all written materials that are presented to the study committee by all non-Academy individuals. Finally, the act requires that we publicize the names of those individuals whom we select as peer reviewers of our work, after the study is finished. According to the law, if these requirements are not met, an agency is prohibited from utilizing the report. Thus at the end of each study, the relevant Academy staff certify to the government that the Section 15 requirements have been substantially complied with according to law.

Our system for complying with the notice requirements in Section 15 is based on an extensive use of our Worldwide Web site at www.nas.edu.

First, when a study is initiated, we give that project a number, and essentially create a separate home page for that project on the Academy's Web site. The responsible staff officer on a study must insure that proper information is entered into a standard electronic form, or template, which is then posted to our Web site. The requirements that each staff officer needs to follow are outlined in a detailed protocol that is the same for all units of the Academy. The information provided by the staff officer includes the project scope, duration, details of committee membership, dates and location of data gathering meetings and agendas for sessions open to public participation. A summary following the conclusions of those meetings that are closed to participation by non-Academy individuals is also posted.

While each of the hundreds of studies that we carry out has its own page on the Web, we have made it easy for someone from the general public to search our site to find a committee of interest. To display all new committees, one simply clicks on the heading "current projects" on the Academy's main web page, and then view our projects by date. There are also separate views by subject and by title, and most recently, a view listing committees whose membership remains open for public comment. Once a person has identified the project he or she is interested in, the web address for that project can be printed out, and/or stored on a book mark in one's computer. The project can then be directly called up to track its current status and planned meetings.

The public can submit comments electronically to the Academy on every project record on the Web site. This feedback process can be used to make comments on the membership of the committee, for consideration within 20 days after the initial posting, to offer information or data to the committee, or to ask questions.

We also have a formal system for analyzing and revealing the potential conflicts of interest of each committee member, as required in Section 15. This is also a responsibility that we take very seriously.

So far, Mr. Chairman, we think that the system is working well. We have, since the act was signed last December 17th, established 319 committee records. (This number includes some committees that were established before December 17, 1997, since relevant committees that were ongoing as of that date have been included in this database). For the two month period of May and June of this year, our current projects Web site had approximately 99,000 hits, or an average of 1,650 per day. We are finding that some of the heaviest users of our site are in the government. To date, we have received about 180 comments (of all types) through the current projects system. Of these, about 120 should be considered valid since about a third of the comments represent duplicate submissions. There are about 20 distinctive comments specifically directed at committee membership, addressing less than 5 per cent of the 319 committee records. It is still too early to know the true significance of these figures, but they do represent clear evidence that our system is being used. To ensure that this system is operating

accurately, we have special staff assigned to regularly and systematically monitor our compliance. We also have staff assigned to improving the software, who have done an efficient job of setting up and operating a complex system under severe time constraints.

The Academy will continue to devote the necessary resources to the system to ensure its quality. We also look forward to the review of the General Services Administration (GSA) as required by P.L. 105-153, as well as to the review being conducted by the General Accounting Office on our compliance with Section 15.

We have had an ongoing and productive dialogue with the GSA concerning the regulations that they are going to publish later this year, and we hope that our information has been useful to the agency.

We continue to be open to suggestions for improvement. For instance, we received a complaint from one of the litigants in last year's lawsuits that preceded P.L.105-153, who requested a more prominent display of information about upcoming projects. We have responded to his request and, in that process, made some system enhancements.

In short, Mr. Chairman, we believe we have created a system that is very responsive to the act. While we are committed to the system's continual improvement, we feel that we have succeeded in responding to the intent of P.L. 105-153, which was to increase public awareness and access to our processes, without compromising our independence. I hope

that this Committee will agree that we have succeeded in responding to the desires of Congress.

I would now like to show you a brief demonstration of how the Web site I described works, which is the most meaningful way of demonstrating our system.

Mr. HORN. Well, thank you very much. We appreciate you joining us this afternoon.

Let me start in on some—we won't have too many questions of this panel because we have covered a lot of it previously. But, Professor Applegate, in your written testimony on page 14 you refer to the value of deliberation over the common good rather than simply a balancing of competing interests. Could you elaborate on this concept and how advisory committees contrast to other forms of public participation?

Mr. APPLEGATE. Sure. The idea is that what an advisory committee, especially a consensus—or a committee that is trying to reach consensus—does is to look at not only the relevant information about the particular issue, but also consider the various viewpoints on it and talk about them directly with each other. And it is, as much as anything, the spirit in which it is engaged in, and try to reach areas of common understanding, areas of agreement, and see if there are ways that one can come up with a result that meets as many of those needs as possible.

It always sounds very fuzzy when I put it on paper, but I can only say that in the committees I have had experience with, there is reality to that; and that when people are really trying to work together to solve common problems, there is a very different ethic that dominates the tone of the conversation, and I think it is a very powerful thing.

Mr. HORN. Yes. It is amazing, and anybody who has served on a jury, there are rare exceptions here, but there is an amazing amount of common sense that brings a diverse number of people together to look at a problem.

Mr. APPLEGATE. All of the studies of juries show that people take the job very, very seriously and work very hard to come to the right decision.

Mr. HORN. I have sat on, as favors to city managers, noise control at the airport boards. Now, if you want to get into something there where the residents want absolutely no planes and the Chamber of Commerce wants 160 flights a day; and believe it or not, we eventually get a consensus, but it takes a year.

Mr. APPLEGATE. I think some of those might fit into Mr. Davies' description of the way that some hearings are.

Mr. HORN. Yes.

Should agencies be required to issue a formal explanation when they reject the recommendations of an advisory committee? We will just go down the row.

Mr. APPLEGATE. I think it is a very good idea if the agency has gone to the trouble to set one of these up and has asked people to devote the kind of time that it usually requires. That seems to be the least that the agency can do.

Again, in my experience, that has not proven to be a particularly difficult hurdle to manage.

Mr. DAVIES. I agree. There is an interesting example of the EPA Science Advisory Board, which was frustrated for many years by lack of response by the agency and finally got agreement from the administrator to give specific responses to SAB recommendations, and I think it has significantly improved the work of that advisory group.

Mr. ALBERTS. Generally, since we are not government and we are giving independent advice, we don't expect an answer. Sometimes, Congress, when you ask us to do a study, says this agency must either take the advice of the Academy or tell the reasons why. I can tell you when you do that, you get a lot more attention from the agency.

Mr. HORN. At least somebody will have to work all weekend to write the answer, right.

What comments do you have on the issue of whether peer review groups should be covered by the Federal Advisory Committee Act?

Mr. APPLEGATE. I think I will defer to Mr. Davies on that.

Mr. DAVIES. I have not given a lot of thought to that, but I have given a lot of thought to the question of peer review groups, and my inclination is that it would make sense to exempt peer review groups from the act. I think one has to be, obviously, careful about how you define peer review groups and under what conditions they would be exempted. It may make sense to exempt them from certain parts of the act rather than from the act as a whole.

Mr. HORN. Mr. Beierle.

Mr. BEIERLE. This is one area that I have given no thought to, so I guess I would defer back to Mr. Davies on that.

Mr. HORN. So how do you feel? You would just exempt them?

Mr. DAVIES. We have not specifically focused on that. But my inclination is yes, it probably would make sense. There is no question in my mind that the act as it currently stands has been an impediment to certain kinds of peer review. I think something has to be done. Whether a total exemption or something less, I would like to think about that some more.

Mr. ALBERTS. Peer review committees I am very familiar with are at the National Institutes of Health, the kinds of committees that we were talking about in the previous session. Those always deal with the quality of a scientist and very personal matters that exempt them from any public participation in any case. I don't see that the Federal Advisory Committee Act has actually helped with those, myself.

Mr. HORN. So you too would exempt?

Mr. ALBERTS. Yes.

Mr. APPLEGATE. Mr. Chairman, if I might, I think that it is important to emphasize the point that Mr. Davies made, that there are different types of peer review. And when you are talking about peer review that goes to the quality of a proposal or to the quality of a particular individual's work, it is like an employment decision which is often exempted from Government in the Sunshine, Freedom of Information Act kinds of requirements.

I think that is very different from peer review of, for example, a process or particular work product. I have served on the peer review committee of a risk assessment at the Nevada test site, and that is—it is not a FACA-chartered committee. But it has all of its meetings open to the public, and I have not noticed that it makes any difference in the candor with which the group either praises or criticizes the work that has been done on it.

So I think that in crafting an exemption, one would want to be careful to make sure that it is really the core kind of qualitative

decision where you would really lose candor rather than a blanket kind of exemption.

Mr. HORN. In your opinion, is termination of advisory committees a problem? Do they tend to outlive their usefulness? We asked that of the last panel, and what gracefully can be done to get rid of them if the agency doesn't feel or the citizens don't feel that we are getting anywhere.

Mr. APPLEGATE. Mr. Chairman, I think FACA actually has a pretty good provision in there, which is that there is a 2-year renewal requirement; and if that renewal process is taken seriously, it does provide a convenient way to terminate groups whose function has really ceased.

Another very good way to do that—and I know it is in the GSA regulations, I am not sure if it is in the statute, but to be very clear up front what the charge of the committee is—if it is to answer certain questions, once those questions are answered, everybody can go away and there is not a sense that—of dissatisfaction with it.

Obviously, time limits could also be built into the original charge: you will answer these questions within a stated period of time. So up front and, I think, the FACA provision for an automatic review are probably the best ways to address that.

Mr. DAVIES. I think I would agree. The only question I would raise, I am sure there is a tendency for advisory groups to continue for the reasons that Jim Dean commented on.

The question is, what difference does it make if some committee exists in name and never meets? It may not be that serious a problem.

Mr. HORN. Any thoughts?

Mr. BEIERLE. Just an observation. When you look through the numbers on meetings of Federal advisory committees that come out in the annual report—and that is something that we have done—by and large, the ones where there are zero meetings for the year quite often turn out to be advisory committees that were authorized by statute rather than ones authorized or created by the agency.

So I think that the ceiling that is in effect has—one positive aspect of that has been this review of committees, but I don't think that same review has been done of ones that are authorized by statute. So in some ways that is reiterating a point that people made earlier.

Mr. HORN. Interesting, because I am thinking when Members do some of that by statute, what they are telling the world is that this agency doesn't listen to people, and we have a number of agencies like that. They talk a great game on TV, but they don't listen. They don't listen to scientists and they don't listen to a lot of people. You confront them and say, hey, maybe they can learn from each other.

And I guess my question would be, is the agency just undercutting what was the congressional mandate by not providing the money, in which case somebody up here should be cutting a real swath out of the administrator's office the next year, and then they get the message that you are serious, but we will leave that to whoever put these in, the authorizing committees probably in all cases, just out of frustration.

Anyhow, Dr. Alberts, what is your reaction to this on termination?

Mr. ALBERTS. I agree with what was said earlier. I think a meaningful review at periodic intervals—and I stress "meaningful"—is the best way to get rid of review groups; and you would have to look at the specific mechanisms that are used to review them because if they are fair and rigorous, then they view the committee should continue them and that is probably the right judgment.

The important thing is that they have some periodic review, in my experience.

Mr. HORN. What about—do you have any other recommendations for changes in the Federal Advisory Committee Act? How about that, Dr. Alberts?

Mr. ALBERTS. Well, I think somebody else—I guess what everybody else has said, every committee is different, and I am concerned about some committees that operate under the act where I know the people who are advising are not saying what they really believe because the press is there and they, therefore, are not serving the purpose that the committee is meant to have.

So if there could be some way in which one could use some qualitative judgment of which ones—which committees are under the act and which are not, I think we would be better off. How we would do that, I don't know.

I do know of Federal Advisory Act committees that are not effective, and they are wasting time; and a clear reason, when you talk to people on them, is that they don't want to be accused of saying something because of their personal interests and, therefore, they don't really give their honest opinion.

And it is very important, of course, to them that the press is there, and they don't know what is going to happen in the newspapers. And so that's the fundamental issue for a lot of people when they are confronted with situations where they would like to say something but they don't.

Mr. HORN. Well, how serious is that? I mean, let's face it, if you are on an advisory committee, that is one way you get to know the key people in an agency. It seems to me that you just pick up the phone when you leave and say, hey, Pete or Susie, I didn't give you my full opinion on this and here is why.

Mr. ALBERTS. I don't know the answer to that, but it is important to get people who honestly state their opinions. And you don't like to say in public sometimes things that are true because they are insulting to somebody else, but sometimes you have to say those things to someone in the agency to make sure that the advice is the correct advice. So it is a fine line that I think somehow agencies are going to have to deal with.

Mr. HORN. Mr. Beierle.

Mr. BEIERLE. I would just say there is probably a need to review how the Federal Advisory Committee Act impacts the advisory committees at the local level, the site-specific or region-specific committees. In the work that we did, one of our main conclusions was that FACA seems to work fine for inside-the-Beltway committees, but the problems seem to arise more at the site-specific level.

One way you can see this is looking at three agencies that we looked at—the Department of Energy, the Department of Defense,

and the Environmental Protection Agency—and how they dealt with the Federal Advisory Committee Act and their site-specific boards.

The Department of Energy has chosen to charter its committees under FACA, whereas the Department of Defense, with its restoration advisory boards, and EPA, with its community advisory groups, have chosen not to charter those under FACA.

Mr. HORN. Why is that, do you know?

Mr. BEIERLE. I can tell you in both cases. The Department of Defense is a little different, but in both cases their justification came out of some work that was done by the Federal Facilities Environmental Restoration Dialogue Committee which recommended, for public participation in a site-specific context, that the Federal Advisory Committee imposed procedural barriers on participation. They recommended complying with the spirit of the act, which is to say, balanced committee openness to the public, but not things like publishing notices of meetings in the Federal Register and some of the less relevant items for site-specific work. So both the Department of Defense and EPA decided to go that route and comply with the spirit of FACA, but not charter committees under FACA.

The Department of Defense had the added issue of wanting to create 200 of these committees, which would have blown through the administration's ceilings, and they also wouldn't go the Department of Energy route of incorporating them under one committee because then they would have to meet on different days, and various complications along those lines.

What you get in the committees then, because they are not chartered under FACA, is a minimizing of participation in order not to come up against FACA; and that is most obviously seen in the necessity of dancing around this issue of consensus and not being able to, as Dr. Applegate spoke about earlier, use the group as a deliberative group to generate a consensual vision of what should happen.

Both DOD and the EPA have to deal with the members of their committees on more of a one-to-one basis, and to the extent that these committees are working, they are working in spite of FACA rather than because of FACA. That seems to be an issue that is coming up more and more now, particularly at EPA where there is more of a focus on community-based decisionmaking and things like that.

Mr. HORN. Thank you.

Mr. Davies.

Mr. DAVIES. Mr. Beierle expressed my views very well.

Mr. HORN. Professor Applegate?

Mr. APPLEGATE. I think the difficulties that FACA raises—and the term I am taking from Mr. Davies' written testimony—reflect more FACA "phobia" than the reality.

If you look at the statute itself, the requirements are really quite minimal. They are very important, but they are not particularly burdensome. And the GSA requirements add some to it, but they also are not particularly burdensome.

I think probably the real change is the kind of thing that GSA in its previous testimony suggested they were doing, which is finding a way to make their regulations more user friendly, if you will,

or simply to educate people in the field about what is really required and what isn't.

I have certainly heard stories, not seen them fortunately, of FACA being used to impose requirements like you have to follow Roberts' Rules of Order to the letter and things that are nowhere in any statute, as an excuse to limit public participation or channel it into certain directions.

I think that is not a problem with the statute; it is a problem with the way it is being interpreted.

I would not recommend any particular changes in FACA. I think it is quite—it serves its purpose very well as written, and one of the most important things that it does is give a minimum of guidance which allows a maximum of flexibility in the uses of advisory committees, which I think is something which is very important.

Mr. HORN. Well, we thank you, and we thank you all for coming here and sharing your thoughts with us. I appreciate the research that went behind several of your papers and thank you very much for coming.

I want to thank the staff that prepared this hearing. J. Russell George is the staff director and chief counsel for the subcommittee. He is right back here against the wall. And John Hynes to your right, professional staff member, specifically responsible for the aspects of this law and putting the panels together. Randy Kaplan also worked with John Hynes on that as a professional staff member. Matthew Ebert, clerk, and Mason Alinger, staff assistant, and then we are filled with helpful interns this summer—Betsy Damus, Mark Uriuolo, Solomon Bartel, and David Graff.

And on the minority side we have Brian Cohen, professional staff member.

And we have two court reporters today, Joe Strickland and Doreen Dotzler, and we thank you all for your help. And with that, this hearing is adjourned.

[Whereupon, at 4:32 p.m., the subcommittee was adjourned.]

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